

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")  
AND  
AXON ENTERPRISES, INC. ("Contractor")  
for  
BODY CAMERA PARTS AND ACCESSORIES  
CONTRACT NUMBER: MA 8700 NC190000029**

This Contract is between Axon Enterprises, Inc. having offices at 17800 N. 85<sup>th</sup> Street, Scottsdale, AZ, 85255 and the City, a home-rule municipality incorporated by the State of Texas. Solicitation requirements are met by using Contractor's State of Texas Department of Information Resources Contract No. DIR-TSO-3561.

**1.1 This Contract is composed of the following documents:**

- 1.1.1 State of Texas Department of Information Resources Contract DIR-TSO-3561
- 1.1.2 This Contract
- 1.1.3 Exhibit A, Supplemental Terms
- 1.1.4 Exhibit B, Axon Enterprises, Inc. DIR price list
- 1.1.5 Exhibit C, Non-Discrimination and Non-Retaliation Certification
- 1.1.6 Exhibit D, Non-Suspension or Debarment Certification

**1.2 Order of Precedence.** Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

- 1.2.1 State of Texas Department of Information Resources Contract DIR-TSO-3561 as referenced in Section 1.1.1
- 1.2.2 This Contract
- 1.2.3 Supplemental Terms as referenced in Section 1.1.3
- 1.2.4 Axon Enterprises, Inc. DIR price list as referenced in Section 1.1.4, including subsequent clarifications

**1.3 Quantity.** Quantity of goods or services as described in Exhibit B.

**1.4 Term of Contract**

1.4.1 **Term of Contract.** The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 12 months. The Contract may be extended beyond the initial term for up to four additional 12 month periods at the City's sole option, subject to the extension of the cooperative contract (as referenced in Section 1.1.1 above).

1.4.1.1 If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period.

**1.5 Compensation.** The Contractor shall be paid a total Not-to-Exceed amount of \$300,000 for the initial term; \$300,000 for the first extension option; \$300,000 for the second extension option; \$300,000 for the third extension option; \$300,000 for the fourth extension option for a total not-to-exceed contract amount of \$1,500,000, including all fees and expenses.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

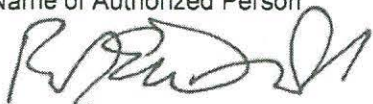
In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

**AXON ENTERPRISES, INC.**

**CITY OF AUSTIN**

Robert Driscoll

Printed Name of Authorized Person



Signature

VP, Associate General Counsel

Title:

5/22/2019

Date:

Daniel Dellemonache

Printed Name of Authorized Person



Signature

Procurement Specialist III

Title:

8/8/19

Date:

- Exhibit A – Supplemental Terms
- Exhibit B – Axon Enterprises, Inc. DIR price list
- Exhibit C – Non-Discrimination and Non-Retaliation Certification
- Exhibit D – Non-Suspension or Debarment Certification

**EXHIBIT A  
CITY OF AUSTIN  
PURCHASING OFFICE  
SUPPLEMENTAL PURCHASE PROVISIONS**

The following Supplemental Purchasing Provisions apply to this solicitation:

1. **INSURANCE:** Insurance does not apply to this solicitation.
2. **INVOICES and PAYMENT:**
  - A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

Invoices shall be emailed to the below address:

	City of Austin
Department	Austin Police Department
Attn:	Accounts Payable
Email Address	APDAccountsPayable@austintexas.gov

- B. **Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
- C. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- D. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the Deliverables or of the invoice, whichever is later.
- E. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- F. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- G. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
  - i. delivery of defective or non-conforming Deliverables by the Contractor;
  - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
  - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

- iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
  - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
  - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
  - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- H. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- I. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- J. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

### **3. PUBLISHED PRICE LISTS:**

- A. Offerors may quote using published price lists in the following ways:
- i. Offerors may quote one discount from a Published Price List for all offered items to be covered in the Contract. The discount must remain firm during the life of the Contract.
  - ii. Offerors may quote their dealer cost, plus a percentage markup to be added to the cost. The percentage markup must remain firm during the life of the contract.
- B. Two (2) copies of the list upon which the discounts or markups are based shall be submitted with the Offer. All price lists identified in the Offer shall clearly include the Offeror's name and address, the solicitation number, prices, title of the discount and number, and the latest effective date of the price list. If the Offer is based on a discount or markup on a manufacturer's price list, the price list must also include the manufacturer's name, the manufacturer's latest effective date, and the manufacturer's price schedule. All price lists submitted become part of the Offer.
- C. The price list may be superseded or replaced during the Contract term only if price revisions are the result of the manufacturer's official price list revision. Written notification from the Contractor of price changes, along with two (2) copies of the revised list must be submitted to the Buyer in the Purchasing Office with the effective date of change to be at least 30 calendar days after written notification. The City reserves the right to refuse any list revision.
- D. The discounts or markups on equipment rental, material, supplies, parts, and contract services shall be fixed throughout the term of the Contract, and are not subject to increase.
- E. Failure to submit written notification of price list revisions will result in the rejection of new prices being invoiced. The City will only pay invoices according to the last approved price list.

### **4. NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING:**



- A. On June 14, 2018, the Austin City Council adopted Ordinance No. 20180614-056 replacing Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). The City requires Offerors submitting Offers on this Solicitation to certify that the Offeror has not in any way directly or indirectly had communication restricted in the ordinance section 2-7-104 during the No-Lobbying Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at:  
[https://assets.austintexas.gov/purchase/downloads/New\\_ALO\\_Ordinance\\_No\\_20180614-056.pdf](https://assets.austintexas.gov/purchase/downloads/New_ALO_Ordinance_No_20180614-056.pdf) and is also included in the Solicitation, Section 0200 V2, Solicitation Instructions June 26, 2018.

**5. WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):**

- A. Contractors are required to obtain a certified criminal background report with fingerprinting (referred to as the "report") for all persons performing on the contract, including all Contractor, Subcontractor, and Supplier personnel (for convenience referred to as "Contractor's personnel").
- B. The report may be obtained by reporting to one of the below governmental entities, submitting to fingerprinting and requesting the report [requestors may anticipate a two-week delay for State reports and up to a four to six week delay for receipt of a Federal report].
- i. Texas Department of Public Safety for any person currently residing in the State of Texas and having a valid Texas driver's license or photo ID card;
  - ii. The appropriate governmental agency from either the U.S. state or foreign nation in which the person resides and holds either a valid U.S. state-issued or foreign national driver's license or photo ID card; or
  - iii. A Federal Agency. A current Federal security clearance obtained from and certified by a Federal agency may be substituted.
- C. Contractor shall obtain the reports at least 30 days prior to any onsite work commencement. Contractor also shall attach to each report the project name, Contractor's personnel name(s), current address(es), and a copy of the U.S. state-issued or foreign national driver's license or photo ID card.
- D. Contractor shall provide the City a Certified Criminal Background Report affirming that Contractor has conducted required security screening of Contractor's personnel to determine those appropriate for execution of the work and for presence on the City's property. A list of all Contractor Personnel requiring access to the City's site shall be attached to the affidavit.
- E. Upon receipt by the City of Contractor's affidavit described in (D) above and the list of the Contractor's personnel, the City will provide each of Contractor's personnel a contractor ID badge that is required for access to City property that shall be worn at all times by Contractor's personnel during the execution of the work.
- F. The City reserves the right to deny an ID badge to any Contractor personnel for reasonable cause, including failure of a Criminal History background check. The City will notify the Contractor of any such denial no more than twenty (20) days after receipt of the Contractor's reports. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the contract, the Contractor shall so notify the City's Contract Manager, in writing, within ten (10) calendar days of the receipt of notification of denial.
- G. Contractor's personnel will be required to wear the ID badge at all times while on the work site. Failure to wear or produce the ID badge may be cause for removal of an individual from the work site, without regard to Contractor's schedule. Lost ID badges shall be reported to the City's Contract

Manager. Contractor shall reimburse the City for all costs incurred in providing additional ID badges to Contractor Personnel.

- H. ID badges to enter and/or work on the City property may be revoked by the City at any time. ID badges must be returned to the City at the time of project completion and acceptance or upon removal of an individual from the work site.
  - I. Contractor is not required to obtain reports for delivery personnel, including but not limited to FedEx, UPS, Roadway, or other materials delivery persons, however all delivery personnel must present company/employer-issued photo ID and be accompanied by at least one of Contractor's personnel at all times while at the work site.
  - J. The Contractor shall retain the reports and make them available for audit by the City during regular business hours (reference paragraph 17 in Section 0300, entitled Right to Audit).
8. **CONTRACT MANAGER:** The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Juanita Fonseca

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Juanita.Fonseca@austintexas.gov

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512-974-5067

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\*Note: The above listed Contract Manager is not the authorized Contact Person for purposes of the **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING Provision** of this Section; and therefore, contact with the Contract Manager is prohibited during the no contact period.

9. **Definitions:**

**"Affiliate"** means, including but not limited to, (i) City's parent subsidiaries, partnerships, joint ventures, franchisees, assigns, business partners, contractors, subcontractors and consultants, controlling, controlled by or under common control of City as they may change from time to time, and (ii) Users, as they may change from time to time.

**"Amendment"** means any written document executed by both Parties that modifies the terms of this Master Software as a Service Agreement, including referenced attachments.

**"Authorized Persons"** means the service provider's employees, contractors, subcontractors or other agents who need to access the City's personal data to enable the service provider to perform the services required.

**"Change Order Request"** means the written document provided by Client to Provider requesting changes to Provider's obligations under this Agreement.

**"Change Order Response"** means the written document provided to Client by Provider in response to Client's Change Order Request.

**"City"** means any government or government agency that uses these terms and conditions. The term is a placeholder for the government or government agency.

**"City Data"** means all data created, received, or in any way originating with the City, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in an way originated with the City, whether such data or output is stored on the City's hardware, the service provider's hardware or exists in any system owned, maintained or

otherwise controlled by the City or by the service provider.

**"City Identified Contact"** means the person or persons designated in writing by the City to receive security incident or breach notification.

**"Confidential Information"** means all written or oral information, disclosed by either Party to the other, related to the operation of either Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential.

**"Data Breach"** means the unauthorized access by a non-authorized person/s that results in the use, disclosure or theft of a City's unencrypted personal data.

**"Non-Public Data"** means data, other than personal data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the City because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.

**"Non-subscription Services"** means the services provided to Client by Provider under this Agreement that are not included in the definition of Subscription Services. Nonsubscription Services shall include, but not be limited to, consulting, implementation, customization and other services provided to Client by Provider under this Agreement, together with all documentation provided by or otherwise required of Provider for any of the consulting, implementation, customization or other services it provides.

**"Personal Data"** means data that includes information relating to a person that identifies the person by name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport), financial account information, including account number, credit or debit card numbers, or protected health information (PHI) relating to a person.

**"Provider Information"** means all techniques, algorithms and methods or rights thereto owned by or licensed to Provider during the term of this Agreement and employed by Providers in connection with the Subscription Services and the Non-subscription Services Provided to Client.

**"Provider Software"** means software that was developed or licensed to Provider independent of this Agreement and which Provider utilizes to provide the Subscription Services or the Nonsubscription Services.

**"Security Incident"** means the potentially unauthorized access by non-authorized persons to personal data or non-public data the service provider believes could reasonably result in the use, disclosure or theft of a City's unencrypted personal data or non-public data within the possession or control of the service provider. A security incident may or may not turn into a data breach.

**"Service Level Agreement" (SLA)** means a written agreement between both the City and the service provider that is subject to the terms and conditions in this document that unless otherwise agreed to includes:

- (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure),
- (2) description of service quality, (3) identification of roles and responsibilities, (4) security responsibilities and notice requirements, (5) how disputes are discovered and addressed, and (6) any remedies for performance failures.

**"Service Levels"** means the performance specifications for work performed by Provider under a SaaS Subscription Schedule or Statement of Work.

**“Software-as-a-Service” (SaaS)** means the capability provided to the City to use the provider’s applications running on a cloud infrastructure. The applications are accessible from various client devices through a thin- client interface such as a Web browser (e.g., Web-based email) or a program interface. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.

**“SaaS Software Application”** and **“SaaS Software”** mean the computer software listed on a SaaS Subscription Schedule to which Provider has granted Client access and use as part of the Subscription. This includes any customization, other derivative works, upgrades, releases, fixes, patches, etc. related to the software that Provider develops or deploys during the term of this Agreement, together with all documentation provided by or otherwise required of Provider for any of the software, customization, other derivative works, upgrades, releases, fixes, patches, etc.

**“SaaS Subscription Schedule”** means the document, executed by both Parties that sets out the Parties’ rights and obligations with respect to Client’s access to and use of the SaaS Software Application.

**“Statement/Scope of Work”** means a written statement in a solicitation document or contract that describes the City’s service needs and expectations.

**“Subscription Services”** means Client’s access to and use of and Provider’s provision of the SaaS Software Applications and other services listed on a SaaS Subscription Schedule and in accordance with the terms and conditions set forth in the SaaS Subscription Schedule.

**“Third Party”** means any natural person or legal entity other than Provider and Client.

**“Transition Date”** means the date upon which it is established to Client’s satisfaction that the SaaS Software Application is stable enough to support Client’s production processing.

**“User”** means Client’s employees, agents, consultants, outsourcing companies, contractors and others who are authorized by Client to access and use the SaaS Software Applications and any part or portion of the Subscription Services or non- Subscription Services in the performance of their duties for Client.

**“User Information”** means all information directly or indirectly obtained from Users accessing the SaaS Software Applications where such information is obtained by Provider or by any of its employees, representatives, agents or any Third Parties having contractual privity with Provider or who are under Provider’s supervision or control.

**“Work Product”** means, except for the Provider Information, all deliverable and other materials, products or modifications developed or prepared for Client by Provider under this Agreement, including without limitation, any integration software or other software, all data, program images and text viewable on the Internet, any HTML code relating thereto, or any program code, including program code created, developed or prepared by Provider under or in support of the performance of its obligations under this Agreement, including manuals, training materials and documentation, but excluding the Provider Software.

10. **DATA LOCATION:** The Service Provider shall provide its Services to the City and its end users solely from data centers in the U.S. Storage of City Data at rest shall be located solely in data centers in the U.S. The Service Provider shall not allow its personnel or contractors to store City Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The service provider shall permit its personnel and contractors to access City data remotely only as required to provide technical support. The service provider shall provide technical user support on a 24/7 basis unless otherwise prohibited in this contract.
11. **Workforce:**

- A. **Subcontractor Disclosure:** The Service Provider shall identify all of its strategic business partners related to services provided under this contract, including but not limited to all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the service provider, and who shall be involved in any application development and/or operations.
  - B. **Background Checks:** The Service Provider shall conduct criminal background checks and not utilize any staff, including Subcontractors, to fulfill the obligations of the Contract who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Service Provider shall promote and maintain an awareness of the importance of securing the City's information among the service provider's employees and agents.
  - C. **Non-disclosure and Separation of Duties:** The Service Provider shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of City data to that which is absolutely necessary to perform job duties.
  - D. **Right to Remove Individuals:** The City shall have the right at any time to require that the Service Provider remove from interaction with City any Service Provider representative who the City believes is detrimental to its working relationship with the Service Provider. The City shall provide the Service Provider with notice of its determination, and the reasons it requests the removal. If the City signifies that a potential security violation exists with respect to the request, the Service Provider shall immediately remove such individual. The Service Provider shall not assign the person to any aspect of the contract or future work orders without the City's consent.
12. **Import and Export of Data:** The City shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the service provider. This includes the ability for the City to import or export data to/from other service providers.
13. **Right to Audit:**
- A. **Access to Security Logs and Reports:** The service provider shall provide reports to the City in a format as specified in the SLA agreed to by both the service provider and the City. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all City files related to this contract.
  - B. **Data Center Audit:** The service provider shall perform an independent audit of its data centers at least annually at its expense, and provide a redacted version of the audit report upon request. The service provider may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.
14. **Warranty:**
- A. **Warranty - Performance:** Provider represents and warrants that: (a) Subscription Services provided under any SaaS Subscription Schedule and Non-subscription Services provided under a Statement of Work shall be provided and performed by qualified personnel in a professional, workmanlike manner, consistent with the prevailing standards of the industry; (b) it shall use industry best practices to fulfill its obligations under each SaaS Subscription Schedule and Statement of Work; and (c) any deliverables provided by Provider shall operate in conformance with the terms of this Master Software as a Service Agreement and the applicable SaaS Subscription Schedules and Statements of Work.

- B. **Warranty - Authority:** Provider warrants that it has all authority necessary to provide for Client's access and use of the Subscription Services and the Non-subscription Services for the purposes set forth in this Master Software as a Service Agreement, in any SaaS Subscription Schedule and in any Statement of Work. Provider further represents and warrants that sale, licensing or use of any of the Subscription Services and of the Nonsubscription Services furnished under this Agreement does not and shall not infringe, misappropriate or otherwise violate any Third Party's intellectual property rights.
- C. **Warranty-Software.** Unless otherwise expressly provided in this Master Software as a Service Agreement, a SaaS Subscription Schedule or Statement of Work, Provider for itself and for and on behalf of its service providers, licensors, employees and agents warrants that: (a) the functions contained in the Subscription Services and in any Nonsubscription Services provided under this Agreement shall meet Client's requirements, (b) the operation of the Subscription Services and any Non-subscription Services shall be uninterrupted and error free to the operational level defined in the SLA, (c) the Subscription Services and any Non-subscription Services shall have the capacity to meet the demand during the times specified in the Subscription Services Schedule(s) and in the Statement(s) of Work for Non-subscription Services as well as future releases of web browsers, and shall have both forward and backward functionality. Provider shall be liable for any direct damages and all costs that Client may suffer arising out of use of, or inability to use, the Subscription Services and Non-subscription Services provided under this Agreement that result from any negligent or willful act or omission of Provider or its agents. Without limitation, Provider's indemnification obligation under this section includes any claim, damage, loss or expense arising from or in connection with any negligent or willful act or omission by an agent, contractor, subcontractor, consultant, or employee of Provider that results in, or is intended by such agent, contractor, subcontractor, consultant, or employee to result in, harmful or otherwise unauthorized access into any of Client's systems, data, Client's Confidential Information, or Client's technology.
- D. **Warranty – Against Undisclosed Illicit Code:** Provider warrants that, unless authorized in writing by Client, any software program or any other part or portion of the Subscription Services or Non-subscription Services developed by Provider, passed through to Client from Third Parties under this Agreement or provided to Client by Provider for use by Provider or Client shall:
- a. Not contain any hidden file;
  - b. Not replicate, transmit or activate itself without control of a human operating the computing equipment on which it resides;
  - c. Not alter, damage or erase any data or computer programs without control of a human operating the computing equipment on which it resides;
  - d. Not contain any key, node lock, time-out or other function, whether implemented by electronic, mechanical or other means, that restricts or may restrict use or access to any software programs, Subscription Services or Non-subscription Services developed or data created under this Agreement, based on residency on a specific equipment configuration, frequency of duration of use or other limiting criteria;
  - e. Not contain any virus, malicious, illicit or similar unrequested code, whether known or unknown to Provider; and
  - f. Not use electronic self-help, including but not limited to preventing electronically Client's further or continued use of and/or access to the subscription Services, Non-subscription Services or any software or other portion thereof.
  - g. Notwithstanding any provision in this Agreement to the contrary, if any Subscription Service or Non- subscription Service has any of the foregoing attributes (collectively "Illicit Code"), Provider shall be in default of this Agreement, and no cure period shall apply unless approved by the City. At the request of and at no cost to Client, Provider shall remove any such Illicit Code from the licensed software as promptly as possible.
  - h. To protect Client from damages that may be caused intentionally or unintentionally by the introduction of Illicit Code into Client's computer systems, no software may be installed,



executed or copied onto Client's equipment without an express warranty to Client that Illicit Code does not exist. Such warranty shall be set forth on an exhibit attached to and made a part of this Agreement.

- i. Provider agrees that in the event of any dispute with Client regarding an alleged breach of this Agreement, Provider shall not use any type of electronic means to prevent or interfere with Client's use of any portion of the Subscription Services and Non-subscription Services. Provider understands that a breach of this provision could foreseeably cause substantial harm to Client and to numerous Third Parties having business relationships with Client.

## 15. DATA

- A. **Data Ownership:** The City will own all right, title and interest in its data that is related to the services provided by this contract. The service provider shall not access City user accounts or City data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this contract, or (4) at the City's written request.
- B. **Data Protection:** Protection of personal privacy and data shall be an integral part of the business activities of the service provider to ensure there is no inappropriate or unauthorized use of City information at any time. To this end, the service provider shall safeguard the confidentiality, integrity and availability of City information and comply with the following conditions:
  - a. The service provider shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of personal data and non-public data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind.
  - b. All data obtained by the service provider in the performance of this contract shall become and remain property of the City. All personal data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of the personal data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the service level agreement (SLA), or otherwise made a part of this contract.
  - c. Unless otherwise stipulated, the service provider shall encrypt all non-public data at rest and in transit. The City shall identify data it deems as non-public data to the service provider. The level of protection and encryption for all non-public data shall be identified and made a part of this contract.
  - d. At no time shall any data or processes – that either belong to or are intended for the use of a City or its officers, agents or employees – be copied, disclosed or retained by the service provider or any party related to the service provider for subsequent use in any transaction that does not include the City.
  - e. The service provider shall not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.
- C. **Compliance with Accessibility Standards:** The service provider shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973.
- D. **Security:** The service provider shall disclose its non-proprietary security processes and technical limitations to the City such that adequate protection and flexibility can be attained between the City and the service provider. For example: virus checking and port sniffing – the City and the service provider shall understand each other's roles and responsibilities.
- E. **Security in Compliance with Chapter 521 of the Texas Business and Commerce Code:** Service provider shall comply with all requirements under Chapter 521 of the Texas Business and Commerce Code, including but not limited to being responsible for a program that protects against

the unlawful use or disclosure of personal information collected or maintained in the regular course of business. The program shall include policies and procedures for the implementation of administrative, technical, and physical safeguards, and shall also address appropriate corrective action for events of any security breach and proper methods of destroying records containing sensitive personal information.

- F. **Security Incident or Data Breach Notification:** The service provider shall inform the City of any security incident or data breach.
- G. **Incident Response:** The service provider may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with the City should be handled on an urgent as-needed basis, as part of service provider communication and mitigation processes as mutually agreed upon, defined by law or contained in the contract.
- H. **Security Incident Reporting Requirements:** The service provider shall report a security incident immediately to the City upon discovery at [APDInfoSec@austintexas.gov](mailto:APDInfoSec@austintexas.gov)
- I. **Breach Reporting Requirements:** If the service provider has actual knowledge of a confirmed data breach that affects the security of any City content that is subject to applicable data breach notification law, the service provider shall (1) promptly notify the appropriate City personnel at [APDInfoSec@austintexas.gov](mailto:APDInfoSec@austintexas.gov) within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.
- J. **Breach Responsibilities:** This section only applies when a data breach occurs with respect to personal data within the possession or control of service provider.
  - a. The service provider, unless stipulated otherwise, shall immediately notify the appropriate City identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.
  - b. The service provider, unless stipulated otherwise, shall promptly notify the appropriate City identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a data breach. The service provider shall (1) cooperate with the City as reasonably requested by the City to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
  - c. Unless otherwise stipulated, if a data breach is a direct result of the service provider's breach of its contract obligation to encrypt personal data or otherwise prevent its release, the service provider shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by state law; (3) a credit monitoring service required by state (or federal) law; (4) establishing a website or a toll-free number and call center for affected individuals required by state law – all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$201 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by service provider based on root cause; all [(1) through (5)] subject to this contract's limitation of liability and Cyber Insurance provision.

## 16. **TERMINATION AND SUSPENSION OF SERVICE:**

- A. In the event of a termination of the contract, the service provider shall implement an orderly return of City data in a CSV or another mutually agreeable format at a time agreed

to by the parties and the subsequent secure disposal of City data.

- B. During any period of service suspension, the service provider shall not take any action to intentionally erase any City data.
- C. In the event of termination of any services or agreement in its entirety, the service provider shall not take any action to intentionally erase any City data for a period of:
  - 30 days after the effective date of termination, if the termination is in accordance with the contract period;
  - 30 days after the effective date of termination, if the termination is for convenience;
  - 60 days after the effective date of termination, if the termination is for cause.After such period, the service provider shall have no obligation to maintain or provide any City data and shall thereafter, unless legally prohibited, delete all City data in its systems or otherwise in its possession or under its control.
- D. The City shall be entitled to any post-termination assistance generally made available with respect to the services unless a unique data retrieval arrangement has been established as part of the SLA.
- E. The service provider shall securely dispose of all requested data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the City. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the City.

**EXHIBIT B**  
**AXON ENTERPRISES, INC**  
**DIR PRICE LIST**

Product Category	Product Description and/or Service Description	Part Number	Price Including DIR Fee					
			0%	1%	3%	5%	7%	10%
			1	2-99	100-249	250-499	500-999	1000+
Axon Body 2	MOLLE MOUNT, SINGLE, AXON RAPIDLOCK	11507	30.18	29.89	29.43	28.83	28.07	27.17
Axon Body 2	MOLLE MOUNT, DOUBLE, AXON RAPIDLOCK	11508	40.25	39.86	39.26	38.45	37.44	36.23
Axon Body 2	BELT CLIP, RAPIDLOCK	11509	30.18	29.89	29.43	28.83	28.07	27.17
Axon Body 2	SYNC CABLE, USB A TO 2.5MM	11553	10.08	9.98	9.83	9.63	9.37	9.07
Axon Body 2	EVIDENCE.COM, DOCK 2, SINGLE CAMERA BAYS +HUB, T&E	70042	377.82	374.04	368.38	360.82	351.37	340.04
Axon Body 2	EVIDENCE.COM DOCK 2, SIX CAMERA BAY+HUB, T&E	70043	1,506.22	1,491.16	1,468.57	1,438.44	1,400.78	1,355.60
Axon Body 2	MAGNET MOUNT, FLEXIBLE WITH RIBS, AXON RAPIDLOCK	71026	29.22	28.93	28.50	27.91	27.18	26.30
Axon Body 2	MAGNET MOUNT, FLEXIBLE, WITH RIBS, BACK PLATE ONLY	71038	11.09	10.98	10.82	10.59	10.31	9.98
Axon Body 2	AXON CAMERA ASSEMBLY, ONLINE, AXON BODY 2, BLK	74001	502.75	497.72	490.18	480.13	467.56	452.47
Axon Body 2	AXON CAMERA ASSEMBLY, OFFLINE, AXON BODY 2, BLK	74004	704.25	697.21	686.65	672.56	654.95	633.82
Axon Body 2	AXON CAMERA BATTERY PACK, AXON BODY 2, BLK	74006	39.30	38.90	38.32	37.53	36.55	35.37
Axon Body 2	AXON DOCK, 6 BAY + CORE, AXON BODY 2	74008	1,506.22	1,491.16	1,468.57	1,438.44	1,400.78	1,355.60
Axon Body 2	AXON DOCK, SINGLE BAY + CORE, AXON BODY 2	74009	377.82	374.04	368.38	360.82	351.37	340.04
Axon Body 2	AXON DOCK, 6 BAY, AXON BODY 2	74010	1,203.97	1,191.93	1,173.87	1,149.79	1,119.69	1,083.57
Axon Body 2	AXON DOCK, SINGLE BAY, AXON BODY 2	74011	75.57	74.81	73.68	72.17	70.28	68.01
Axon Body 2	AXON CAMERA ASSEMBLY, ONLINE, T&E KIT, AXON BODY 2	74016	654.83	648.29	638.47	625.37	609.00	589.35
Axon Body 2	Z-BRACKET MOUNT, MENS, AXON RAPIDLOCK	74018	30.18	29.89	29.43	28.83	28.07	27.17
Axon Body 2	Z-BRACKET MOUNT, WOMENS, AXON RAPIDLOCK	74019	30.18	29.89	29.43	28.83	28.07	27.17
Axon Body 2	MAGNET MOUNT, FLEXIBLE, AXON RAPIDLOCK	74020	30.18	29.89	29.43	28.83	28.07	27.17
Axon Body 2	MAGNET MOUNT, THICK OUTERWEAR, AXON RAPIDLOCK	74021	30.18	29.89	29.43	28.83	28.07	27.17
Axon Body 2	SM POCKET MOUNT, 4 IN, AXON RAPIDLOCK	74022	30.18	29.89	29.43	28.83	28.07	27.17
Axon Body 2	LG POCKET MOUNT, 6 IN, AXON RAPIDLOCK	74023	30.18	29.89	29.43	28.83	28.07	27.17
Axon Body 2	AXON CAMERA ASSEMBLY, ONLINE, AXON BODY 2, BLK, UK	74026	883.32	874.49	861.25	843.57	821.49	794.99
Axon Body 2	VELCRO MOUNT, RAPID LOCK	74054	19.15	18.96	18.67	18.29	17.81	17.23
Axon Body 2	2 YEAR EXTENDED WARRANTY BODY 2	87029	201.45	199.45	196.43	192.40	187.36	181.31
Axon Fleet	ROUTER ANTENNA, FLEET	11511	272.03	269.31	265.23	259.79	252.99	244.83
Axon Fleet	CRADLEPOINT - NETCLOUD + CRADLECARE - 5 YEARS	11521	554.13	548.59	540.28	529.19	515.34	498.72
Axon Fleet	CRADLEPOINT ROUTER - IBR900LP6	11605	886.60	877.74	864.44	846.71	824.54	797.94
Axon Fleet	MODEM, FIRSTNET/BAND 14	11613	181.34	179.54	176.82	173.19	168.66	163.22
Axon Fleet	DOCK, COR EXTENSIBILITY	11614	1,007.49	997.43	982.32	962.17	936.98	906.75
Axon Fleet	CRADLEPOINT IBR900LPE - VZ-NPS ? 4G LTE + 3G EVDO + HSPA (PR	11616	1,440.73	1,426.32	1,404.71	1,375.90	1,339.88	1,296.66
Axon Fleet	SMALL WALL-MOUNT CABINET WITH CABLE MANAGEMENT	11617	976.27	966.51	951.87	932.35	907.93	878.65
Axon Fleet	LARGE ROLLING CABINET WITH CABLE MANAGEMENT	11618	1,202.96	1,190.93	1,172.89	1,148.83	1,118.75	1,082.66
Axon Fleet	RACK-MOUNT UPS	11619	230.72	228.42	224.96	220.35	214.57	207.65
Axon Fleet	ADDITIONAL CUSTOM FLEET TRIGGER and INSTALLATION (1 PER)	11620	99.75	98.75	97.26	95.26	92.77	89.77
Axon Fleet	CRADLEPOINT IBR900-600M-NPS + 5YR NETCLOUD ESSENTIALS (PRIME	11622	1,440.73	1,426.32	1,404.71	1,375.90	1,339.88	1,296.66
Axon Fleet	AXON SIGNAL UNIT	70112	281.10	278.29	274.08	268.45	261.42	252.99
Axon Fleet	FLEET CABLE ASSEMBLY, POWER	71022	15.12	14.97	14.74	14.44	14.06	13.61
Axon Fleet	FLEET CABLE ASSEMBLY, BATTERY BOX TO CAMERA	71023	15.12	14.97	14.74	14.44	14.06	13.61
Axon Fleet	FLEET CABLE ASSEMBLY, ASU POWER	71024	15.12	14.97	14.74	14.44	14.06	13.61
Axon Fleet	WI-FI OFFLOAD, SOFTWARE LICENSE	71039	604.50	598.46	589.39	577.30	562.19	544.05
Axon Fleet	CAMERA SYSTEM, FRONT, FLEET 2	71079	362.70	359.08	353.64	346.38	337.32	326.43
Axon Fleet	CAMERA MOUNT, FRONT, FLEET 2	71080	10.08	9.98	9.83	9.63	9.37	9.07

Axon Fleet	CAMERA SYSTEM, REAR, WITH MOUNT, FLEET 2	71081	322.40	319.18	314.34	307.90	299.84	290.16
Axon Fleet	CAMERA CONTROLLER, REAR, FLEET 2	71082	100.75	99.75	98.24	96.22	93.70	90.68
Axon Fleet	CONTROLLER MOUNT, REAR CAMERA, FLEET 2	71083	10.08	9.98	9.83	9.63	9.37	9.07
Axon Fleet	JUNCTION BOX, FLEET 2	71084	80.60	79.80	78.59	76.98	74.96	72.54
Axon Fleet	CABLE ASSEMBLY, BATTERY BOX TO JUNCTION BOX, FLEET 2	71085	15.12	14.97	14.74	14.44	14.06	13.61
Axon Fleet	BATTERY SYSTEM, AXON FLEET	74024	100.75	99.75	98.24	96.22	93.70	90.68
Axon Fleet	Axon Fleet Dongle	74027	15.07	14.93	14.69	14.39	14.02	13.57
Axon Fleet	STANDARD FLEET INSTALLATION (PER VEHICLE)	74063	1,209.00	1,196.91	1,178.78	1,154.60	1,124.37	1,088.10
Axon Fleet	WI-FI OFFLOAD WIRELESS ACCESS POINT INTEGRATION (5 CONCURREN	74064	18,885.59	18,696.74	18,413.46	18,035.75	17,563.60	16,997.03
Axon Fleet	WI-FI OFFLOAD WIRELESS ACCESS POINT INTEGRATION (25 CONCURRE	74065	33,227.35	32,895.08	32,396.67	31,732.12	30,901.44	29,904.62
Axon Fleet	WI-FI OFFLOAD NETWORK PROFESSIONAL SERVICES	74066	1,007.50	997.43	982.32	962.17	936.98	906.75
Axon Fleet	WI-FI OFFLOAD SOFTWARE MAINT, YEAR 1 PAYMENT	74067	604.50	598.46	589.39	577.30	562.19	544.05
Axon Fleet	WI-FI OFFLOAD SOFTWARE MAINT, YEAR 2 PAYMENT	74068	604.50	598.46	589.39	577.30	562.19	544.05
Axon Fleet	WI-FI OFFLOAD SOFTWARE MAINT, YEAR 3 PAYMENT	74069	604.50	598.46	589.39	577.30	562.19	544.05
Axon Fleet	WI-FI OFFLOAD SOFTWARE MAINT, YEAR 4 PAYMENT	74070	604.50	598.46	589.39	577.30	562.19	544.05
Axon Fleet	WI-FI OFFLOAD SOFTWARE MAINT, YEAR 5 PAYMENT	74071	604.50	598.46	589.39	577.30	562.19	544.05
Axon Fleet	WI-FI OFFLOAD SOFTWARE MAINT: 5 YEAR UPFRONT	74072	3,022.50	2,992.28	2,946.94	2,886.49	2,810.93	2,720.25
Axon Fleet	WI-FI OFFLOAD SOFTWARE MAINT: 3 YEAR UPFRONT	74073	1,813.50	1,795.37	1,768.17	1,731.90	1,686.56	1,632.15
Axon Fleet	WI-FI OFFLOAD SERVER HARDWARE	74074	3,526.25	3,490.99	3,438.10	3,367.57	3,279.42	3,173.63
Axon Fleet	CABLE, CAT6 ETHERNET 25 FT, FLEET	74110	15.12	14.97	14.74	14.44	14.06	13.61
Axon Fleet	EXISTING HARDWARE REMOVAL PER VEHICLE	80127	302.25	299.23	294.70	288.65	281.10	272.03
Axon Fleet	SIGNAL ONLY OR ROUTER ONLY INSTALLATION PER VEHICLE	80129	251.88	249.36	245.58	240.55	234.25	226.69
Axon Fleet	1 DAY, TRAIN THE TRAINER, FLEET INSTALLATION CERTIFICATION,	80130	2,518.75	2,493.57	2,455.79	2,405.41	2,342.44	2,266.88
Axon Fleet	TRAIN INSTALLER OR INSTALLATION FACILITY, PER DAY, PER SITE	80131	2,518.75	2,493.57	2,455.79	2,405.41	2,342.44	2,266.88
Axon Fleet	1 DAY, TRAIN THE INSTALLER, SIGNAL INSTALLATION, PER SITE	80134	2,015.00	1,994.85	1,964.63	1,924.33	1,873.95	1,813.50
Axon Fleet	EVIDENCE.COM STORAGE, UNLIMITED, 5 YEAR UPFRONT, FLEET	80154	2,055.30	2,034.75	2,003.92	1,962.82	1,911.43	1,849.77
Axon Fleet	FLEET 2 UNLIMITED PACKAGE: 5 YEAR UPFRONT PAYMENT	80155	5,984.55	5,924.71	5,834.94	5,715.25	5,565.64	5,386.10
Axon Fleet	FLEET 2 UNLIMITED PACKAGE: YEAR 1 PAYMENT	80156	1,559.61	1,544.02	1,520.62	1,489.43	1,450.44	1,403.65
Axon Fleet	FLEET 2 UNLIMITED PACKAGE: YEAR 2 PAYMENT	80157	1,559.61	1,544.02	1,520.62	1,489.43	1,450.44	1,403.65
Axon Fleet	FLEET 2 UNLIMITED PACKAGE: YEAR 3 PAYMENT	80158	1,559.61	1,544.02	1,520.62	1,489.43	1,450.44	1,403.65
Axon Fleet	FLEET 2 UNLIMITED PACKAGE: YEAR 4 PAYMENT	80159	1,559.61	1,544.02	1,520.62	1,489.43	1,450.44	1,403.65
Axon Fleet	FLEET 2 UNLIMITED PACKAGE: YEAR 5 PAYMENT	80160	1,559.61	1,544.02	1,520.62	1,489.43	1,450.44	1,403.65
Axon Fleet	FLEET 2 HARDWARE BUNDLE: 5 YEAR UPFRONT PAYMENT	80161	1,450.80	1,436.30	1,414.53	1,385.52	1,349.25	1,305.72
Axon Fleet	FLEET 2 VIEW XL VEHICLE LICENSE: YEAR 1 PAYMENT	80167	350.61	347.11	341.85	334.84	326.07	315.55
Axon Fleet	FLEET 2 VIEW XL VEHICLE LICENSE: YEAR 2 PAYMENT	80168	350.61	347.11	341.85	334.84	326.07	315.55
Axon Fleet	FLEET 2 VIEW XL VEHICLE LICENSE: YEAR 3 PAYMENT	80169	350.61	347.11	341.85	334.84	326.07	315.55
Axon Fleet	FLEET 2 VIEW XL VEHICLE LICENSE: YEAR 4 PAYMENT	80170	350.61	347.11	341.85	334.84	326.07	315.55
Axon Fleet	FLEET 2 VIEW XL VEHICLE LICENSE: YEAR 5 PAYMENT	80171	350.61	347.11	341.85	334.84	326.07	315.55
Axon Fleet	FLEET 2 VIEW XL VEHICLE LICENSE: 5 YEAR UPFRONT	80172	1,511.25	1,496.14	1,473.47	1,443.25	1,405.47	1,360.13
Axon Fleet	FLEET 2 TAP PAYMENT: 5 YEAR UPFRONT	80173	2,418.00	2,393.82	2,357.55	2,309.19	2,248.74	2,176.20
Axon Fleet	FLEET 2 TAP PAYMENT: YEAR 1	80174	483.60	478.77	471.51	461.84	449.75	435.24
Axon Fleet	FLEET 2 TAP PAYMENT: YEAR 2	80175	483.60	478.77	471.51	461.84	449.75	435.24
Axon Fleet	FLEET 2 TAP PAYMENT: YEAR 3	80176	483.60	478.77	471.51	461.84	449.75	435.24
Axon Fleet	FLEET 2 TAP PAYMENT: YEAR 4	80177	483.60	478.77	471.51	461.84	449.75	435.24
Axon Fleet	FLEET 2 TAP PAYMENT: YEAR 5	80178	483.60	478.77	471.51	461.84	449.75	435.24
Axon Fleet	FLEET 2 TAP TRUE-UP PAYMENT	80179	58.44	57.86	56.98	55.81	54.35	52.60



Axon Fleet	EXTENDED WARRANTY, 4 YEAR, FLEET 2	80181	403.00	398.97	392.93	384.87	374.79	362.70
Axon Fleet	FLEET EVIDENCE.COM STORAGE (GB)	85738	0.76	0.76	0.75	0.73	0.71	0.69
Axon Fleet	FLEET EVIDENCE.COM STORAGE, UNLIMITED	85739	411.06	406.95	400.79	392.57	382.29	369.96
Axon Fleet	4 YEAR EXTENDED WARRANTY AXON FLEET	87032	402.90	398.88	392.84	384.78	374.70	362.61
Axon Flex 2	FLEX 2 CAMERA, (ONLINE)	11528	452.37	447.85	441.07	432.02	420.71	407.14
Axon Flex 2	FLEX 2 CAMERA, (OFFLINE)	11529	653.87	647.33	637.53	624.45	608.10	588.49
Axon Flex 2	FLEX 2 T&E KIT	11530	1,158.63	1,147.04	1,129.66	1,106.49	1,077.53	1,042.77
Axon Flex 2	FLEX 2 CONTROLLER	11532	251.88	249.36	245.58	240.55	234.25	226.69
Axon Flex 2	CABLE, COILED, STRAIGHT TO RIGHT ANGLE, 48", FLEX 2	11533	17.64	17.46	17.20	16.85	16.41	15.87
Axon Flex 2	USB SYNC CABLE, FLEX 2	11534	10.58	10.48	10.32	10.11	9.85	9.53
Axon Flex 2	USB SYNC CABLE W/ WALL CHARGER, FLEX 2	11535	15.07	14.93	14.69	14.39	14.02	13.57
Axon Flex 2	DOCK, FLEX 2, 1-BAY + CORE	11536	377.82	374.04	368.38	360.82	351.37	340.04
Axon Flex 2	DOCK, FLEX 2, 6-BAY + CORE	11537	1,506.22	1,491.16	1,468.57	1,438.44	1,400.78	1,355.60
Axon Flex 2	DOCK, FLEX 2, 1-BAY	11538	75.57	74.81	73.68	72.17	70.28	68.01
Axon Flex 2	DOCK, FLEX 2, 6-BAY	11539	1,203.97	1,191.93	1,173.87	1,149.79	1,119.69	1,083.57
Axon Flex 2	T&E DOCK, FLEX 2, 1-BAY	11541	377.82	374.04	368.38	360.82	351.37	340.04
Axon Flex 2	T&E DOCK, FLEX 2, 6-BAY	11542	1,506.22	1,491.16	1,468.57	1,438.44	1,400.78	1,355.60
Axon Flex 2	OAKLEY FLAK JACKET KIT, FLEX 2	11544	165.23	163.58	161.10	157.80	153.67	148.71
Axon Flex 2	COLLAR MOUNT, FLEX 2	11545	41.31	40.90	40.28	39.46	38.42	37.18
Axon Flex 2	EPAULETTE MOUNT, FLEX 2	11546	30.73	30.43	29.97	29.35	28.59	27.66
Axon Flex 2	BALLCAP MOUNT, FLEX 2	11547	29.22	28.93	28.50	27.91	27.18	26.30
Axon Flex 2	UNIVERSAL HELMET MOUNT, FLEX 2	11548	26.70	26.44	26.04	25.50	24.84	24.03
Axon Flex 2	TACTICAL SWAT KIT, W/ ARC RAIL, FLEX 2	11549	65.49	64.84	63.86	62.55	60.91	58.94
Axon Flex 2	CLIP, OAKLEY, FLEX 2	11554	23.18	22.95	22.60	22.14	21.56	20.86
Axon Flex 2	MOUNT, BALLISTIC VEST, FLEX 2	11555	31.24	30.93	30.46	29.84	29.05	28.11
Axon Flex 2	C-CLIP ADAPTOR, FLEX 2	11561	12.09	11.97	11.79	11.55	11.25	10.89
Axon Flex 2	ARC RAIL MOUNT, FLEX 2	11615	25.19	24.94	24.57	24.06	23.43	22.67
Axon Flex 2	LOW RIDER, HEADBAND, FLEX 2	71037	29.22	28.93	28.50	27.91	27.18	26.30
Axon Flex 2	WEARABLE CABLE ASSEMBLY, 6 IN, BLACK, ROBIN	74052	13.10	12.97	12.78	12.52	12.19	11.79
Axon Flex 2	4 YEAR EXTENDED WARRANTY FLEX 2	75009	603.50	597.46	588.42	576.35	561.25	543.15
Axon Flex 2	2 YEAR EXTENDED WARRANTY FLEX 2 CAMERA	80118	302.20	299.19	294.66	288.61	281.06	271.99
Axon Flex 2	2 YEAR EXTENDED WARRANTY DOCK FLEX 2, SINGLE BAY + CORE	80124	130.88	129.58	127.61	125.00	121.72	117.79
Axon Flex 2	2 YEAR EXTENDED WARRANTY DOCK FLEX 2, 6 BAY + CORE	80125	503.65	498.63	491.07	481.00	468.40	453.29
Dock	EVIDENCE.COM DOCK, CORE	70027	302.25	299.23	294.70	288.65	281.10	272.03
Dock	EXTENDED WARRANTY, 2 YEAR,EVIDENCE.COM DOCK, HUB	70030	79.60	78.80	77.61	76.02	74.03	71.64
Dock	EXTENDED WARRANTY, 2 YEAR, EVIDENCE.COM DOCK, SINGLE BAY	70031	49.74	49.24	48.50	47.50	46.26	44.77
Dock	EXTENDED WARRANTY, 2 YEAR, EVIDENCE.COM DOCK, 6 BAY	70032	418.09	413.92	407.64	399.28	388.83	376.29
Dock	WALL MOUNT BRACKET, ASSY, EVIDENCE.COM DOCK	70033	42.32	41.90	41.26	40.42	39.36	38.09
Dock	EVIDENCE.COM, DOCK, DESK PLATE, 6 BAYS	70040	35.27	34.91	34.39	33.69	32.80	31.74
Dock	TASER ASSURANCE PLAN DOCK ANNUAL PAYMENT	85079	36.27	35.91	35.37	34.64	33.74	32.65
Dock	TASER ASSURANCE PLAN DOCK 2 ANNUAL PAYMENT	87026	338.52	335.14	330.06	323.29	314.83	304.67
Dock	TASER ASSURANCE PLAN DOCK 2 3 YEAR UPFRONT	87027	1,015.56	1,005.41	990.18	969.86	944.48	914.01
Dock	TASER ASSURANCE PLAN DOCK 2 5 YEAR UPFRONT	87028	1,692.60	1,675.68	1,650.29	1,616.44	1,574.12	1,523.34
Dock	2 YEAR EXTENDED WARRANTY DOCK 2 SINGLE BAY + CORE	87030	130.88	129.58	127.61	125.00	121.72	117.79
Dock	2 YEAR EXTENDED WARRANTY DOCK 2 SIX BAY + CORE	87031	503.65	498.63	491.07	481.00	468.40	453.29



**EXHIBIT C**  
**City of Austin, Texas**  
**NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION**

**City of Austin, Texas**

**Equal Employment/Fair Housing Office**

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

**City of Austin**  
**Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy**

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment

advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

#### Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

#### Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 22nd day of May, 2019

CONTRACTOR  
Authorized  
Signature

Axon Enterprise, Inc.  
[Signature]

Title

VP, Associate General Counsel

**EXHIBIT D**  
**City of Austin, Texas**  
**NON-SUSPENSION OR DEBARMENT CERTIFICATION**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name:

Axon Enterprise, Inc.

Signature of Officer or  
Authorized  
Representative:



Date: 5/22/2019

Printed Name:

Robert Driscoll

Title

VP, Associate General Counsel

**STATE OF TEXAS**  
**DEPARTMENT OF INFORMATION RESOURCES**  
**CONTRACT FOR PRODUCTS AND RELATED SERVICES**  
**TASER INTERNATIONAL INC.**

**1. Introduction**

**A. Parties**

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter “DIR”) with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and Taser International Inc. (hereinafter “Vendor”), with its principal place of business at 17800 North 85<sup>th</sup> Street, Scottsdale, Arizona 85255.

**B. Compliance with Procurement Laws**

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-226, on May 26, 2015, for Law Enforcement IT Hardware, Software and Services. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-226 shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Maser Services and Purchasing Agreement; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-226, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-226, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

**2. Term of Contract**

The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to three (3) optional one-year terms. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional

calendar days.

**3. Product and Service Offerings**

**A. Products**

Products available under this Contract are limited to Products and Related Services for Surveillance, Security and Monitoring as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

**B. Services**

Services available under this Contract are limited to Products and Related Services for Surveillance, Security and Monitoring as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

**4. Pricing**

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

**5. DIR Administrative Fee**

**A)** The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three-quarters of one percent (.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

**B)** All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated in the price to the Customer.

**6. Notification**

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Dana L. Collins, CTPM, CTCM  
Manager, Contract and Vendor Management  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 936-2233

Facsimile: (512) 475-4759  
Email: [dana.collins@dir.texas.gov](mailto:dana.collins@dir.texas.gov)

If sent to the Vendor:

Caitlin Morgan  
Taser International  
17800 North 85<sup>th</sup> Street  
Scottsdale, Arizona 85255  
Phone: (480) 502-6296  
Facsimile: (480) 991-0791  
Email: [cmorgan@taser.com](mailto:cmorgan@taser.com)

## 7. License and Service Agreements

### A. Shrink/Click-wrap License Agreement

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.**

### C. Conflicting or Additional Terms

In the event that conflicting or additional terms in Shrink/Click Wrap License Agreements, Service and Maintenance Agreements or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.

In the event of a conflict, any linked documents may not take precedence over the printed or referenced documents comprising this contract; provided further that any update to such linked documents shall only apply to purchases or leases of the associated Vendor product or service offering after the effective date of the update; and, provided further, that, if Vendor has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Vendor's initial response shall apply to that purchase unless Vendor directly informs Customer of the update before the purchase is consummated.



In the event that different or additional terms or conditions would otherwise result from accessing a linked document, agreement to said linked document shall not be effective until reviewed and approved in writing by Customer's authorized signatory.

Vendor shall not [without prior written agreement from Customer's authorized signatory,] require any document that: 1) diminishes the rights, benefits, or protections of the Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of the Customer; or 2) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.

If Vendor attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to the contract between DIR and Vendor or Vendor and Customer, and Vendor will nonetheless be obligated to perform the contract without regard to the prohibited documents, unless Customer elects instead to terminate the contract, which in such case may be identified as a termination for cause against Vendor.

The foregoing requirements apply to all contracts, including, but not limited to, contracts between Customer and a reseller who attempts to pass through documents and obligations from its Manufacturer of Publisher.

**8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts, , as listed below are hereby added as follows:**

**A. Section 5. Intellectual Property, Subsection A. Definitions, 1) "Work Product", is hereby replaced in its entirety as follows:**

1)" Work Product" means any and all *bespoke* deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all

documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

**B. Section 10. Vendor Responsibilities, Subsection A. Indemnification, 2) Acts or Omissions,** is hereby replaced in its entirety as follows:

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED *REASONABLE* COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any *product defects, or intentional, willful, reckless, or negligent* acts or omissions, of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

**C. Section 10. Vendor Responsibilities, Subsection A. Indemnification, 3) Infringements, a),** is hereby replaced in its entirety as follows:

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING *REASONABLE* ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT

Vendor Contract No. \_\_\_\_\_

AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

**D. Section 10. Vendor Responsibilites, Subsection B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE, 2),** is hereby replaced in its entirety as follows:

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED *REASONABLE* COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

**(Remainder of Page Intentionally Left Blank)**

Vendor Contract No. \_\_\_\_\_

This Contract is executed to be effective as of the date of last signature.

**TASER INTERNATIONAL INC.**

**Authorized By:** Signature on File

**Name:** Robert Driscoll

**Title:** VP Sales Operations

**Date:** 11/16/2016

**The State of Texas, acting by and through the Department of Information Resources**

**Authorized By:** Signature on File

**Name:** Hershel Becker

**Title:** Chief Procurement Officer

**Date:** 11/18/2016

**Office of General Counsel:** DB 11/17/2016

**Appendix A**  
**Standard Terms and Conditions For Product and Related Services Contracts**

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### Standard Terms and Conditions For Product and Related Services Contracts

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**Appendix A**  
**Standard Terms and Conditions For Product and Related Services Contracts**

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The following terms and conditions shall govern the conduct of DIR and Vendor during the term of the Contract.

**1. Contract Scope**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

The Vendor shall provide the products and related services specified in Section 3 of the Contract for purchase by Customers. In addition, DIR and Vendor may agree to provisions that allow Vendor and/or Order Fulfiller to lease the products offered under the Contract. Terms used in this document shall have the meanings set forth below in Section 3.

**2. No Quantity Guarantees**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

The Contract is not exclusive to the Vendor. Customers may obtain products and related services from other sources during the term of the Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the Contract.

**3. Definitions**

A. **Customer** - any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

- 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
- 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
- 5) A local workforce development board created under Section 2308.253;
- 6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
- 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
- 9) A nonprofit organization that provides affordable housing.

B. **Compliance Check** – an audit of Vendor's compliance with the Contract may be performed by, but not limited to, a third party auditor, DIR Internal Audit department, or DIR contract

management staff or their designees.

- C. Contract** – the document executed between DIR and Vendor into which this Appendix A is incorporated.
- D. CPA** – refers to the Texas Comptroller of Public Accounts.
- E. Day** - shall mean business days, Monday through Friday, except for State and Federal holidays, unless otherwise specified as calendar days. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- F. Order Fulfiller** – the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.
- G. Purchase Order** - the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
- H. State** – refers to the State of Texas.

#### **4. General Provisions**

##### **A. Entire Agreement**

The Contract, Appendices, and Exhibits constitute the entire agreement between DIR and the Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract, Appendices, or its Exhibits shall be binding or valid.

##### **B. Modification of Contract Terms and/or Amendments**

- 1)** The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.
- 2)** Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiller may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.
- 3)** Customers and Vendor will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract with Vendors.

##### **C. Invalid Term or Condition**

- 1)** To the extent any term or condition in the Contract conflicts with the applicable State and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR does not waive the applicable State and/or United States law or regulation which conflicts with the Contract term or condition.
- 2)** If one or more terms or conditions in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other

parties or circumstances shall remain valid and in full force and effect.

#### **D. Assignment**

DIR or Vendor may assign the Contract without prior written approval to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written notification by the assigning party and, for Vendor, a mutually agreed written Contract amendment. Any other assignment by a party shall require the written consent of the other party and a mutually agreed written Contract amendment.

#### **E. Survival**

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Vendor or Order Fulfiller shall survive expiration or termination of the Contract for the term of the Purchase Order, unless the Customer terminates the Purchase Order sooner. However, regardless of the term of the Purchase Order, no Purchase Order shall survive the expiration or termination of the Contract for more than five years, unless Customer makes an express finding and justification for the longer term. The finding and justification must either be included in the Purchase Order, or referenced in it and maintained in Customer's procurement record. Rights and obligations under this Contract which by their nature should survive, including, but not limited to the DIR Administrative Fee; and any and all payment obligations invoiced prior to the termination or expiration hereof; obligations of confidentiality; and, indemnification, will remain in effect after termination or expiration hereof.

#### **F. Choice of Law**

The laws of the State shall govern the construction and interpretation of the Contract. Exclusive venue for all actions will be in state court, Travis County, Texas. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

#### **G. Limitation of Authority**

Vendor shall have no authority to act for or on behalf of the Texas Department of Information Resources or the State except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State or DIR.

#### **H. Proof of Financial Stability**

Either DIR or Customer may require Vendor to provide proof of financial stability prior to or at any time during the contract term.

### **5. Intellectual Property Matters**

#### **A. Definitions**

1) "Work Product" means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations,

manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

2) "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

3) "Statement of Work" means a document signed by Customer and Vendor describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Vendor is to provide Customer, issued pursuant to the Contract.

4) "Third Party IP" means the Intellectual Property Rights of any third party that is not a party to this Contract, and that is not directly or indirectly providing any goods or services to Customer under this Contract.

5) "Vendor IP" shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Vendor (a) prior to providing any Services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the Services or Work Product, or (b) after the Effective Date of the Contract if such tangible or intangible items or things were independently developed by Vendor outside Vendor's provision of Services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

## **B. Ownership.**

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon

creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.

#### **C. Further Actions.**

Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Vendor's signature due to the dissolution of Vendor or Vendor's unreasonable failure to respond to Customer's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Vendor hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Vendor's agent and Vendor's attorney-in-fact to act for and in Vendor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Vendor, provided however that no such grant of right to Customer is applicable if Vendor fails to execute any document due to a good faith dispute by Vendor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Vendor shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

#### **D. Waiver of Moral Rights.**

Vendor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Vendor may now have or which may accrue to Vendor's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Vendor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

#### **E. Confidentiality.**

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under sub-paragraph H. hereunder. Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

#### **F. Injunctive Relief.**

The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Vendor acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of this Contract, upon a request by Customer, without requiring proof of irreparable injury as same should be presumed.

#### **G. Return of Materials Pertaining to Work Product.**

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertain to the Work Product.

#### **H. Vendor License to Use.**

Customer hereby grants to Vendor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the Services to Customer. Except as provided in this Section, neither Vendor nor any Subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

#### **I. Third-Party Underlying and Derivative Works.**

To the extent that any Vendor IP or Third Party IP are embodied or reflected in the Work Product, or are necessary to provide the Services, Vendor hereby grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Vendor IP or Third Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and (ii) authorize others to do any or all of the foregoing. Vendor agrees to notify Customer on delivery of the Work Product or Services if such materials include any Third Party IP. On request, Vendor shall provide Customer with documentation indicating a third party's written approval for Vendor to use any Third Party IP that may be embodied or reflected in the Work Product.

#### **J. Agreement with Subcontracts.**

Vendor agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing Services or Work Product pursuant to the Contract, prior to their providing such Services or Work Product, and that it shall maintain such written agreements at all times during performance of this Contract, which are sufficient to support all performance and grants of rights by Vendor. Copies of such agreements shall be provided to the Customer promptly upon request.

#### **K. License to Customer.**

Vendor grants to Customer, a perpetual, irrevocable, royalty free license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and

prepare derivative works of any Vendor IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

#### **L. Vendor Development Rights.**

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Vendor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Vendor and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

### **6. Product Terms and Conditions**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

#### **A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)**

1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapters 206 and 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

2) Upon request, but not later than thirty (30) calendar days after request, Vendor shall provide DIR with a completed Voluntary Product Accessibility Template (VPAT) of the specified product or a URL to the VPAT for reviewing compliance with the State Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act).

#### **B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)**

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 6.B.2, below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR or a written certification that a commodity is not on DIR contract (for the limited purpose of purchasing from a local government purchasing cooperative).

2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all



necessary hardware, software and technology services.

3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Subsection 6.B.

## **7. Contract Fulfillment and Promotion**

### **A. Service, Sales and Support of the Contract**

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote products and services available under the Contract. Vendor shall use its best efforts to ensure that potential Customers are made aware of the existence of the Contract. All sales to Customers for products and services available under the Contract shall be processed through the Contract.

### **B. Use of Order Fulfillers**

DIR agrees to permit Vendor to utilize designated Order Fulfillers to provide service, sales and support resources to Customers. Such participation is subject to the following conditions:

#### **1) Designation of Order Fulfillers**

a) Vendor may designate Order Fulfillers to act as the distributors for products and services available under the Contract. In designating Order Fulfillers, Vendor must be in compliance with the State's Policy on Utilization of Historically Underutilized Businesses. In addition to the required Subcontracting Plan, Vendor shall provide DIR with the following Order Filler information: Order Filler name, Order Filler business address, Order Filler CPA Identification Number, Order Filler contact person email address and phone number.

b) DIR reserves the right to require the Vendor to rescind any such Order Filler participation or request that Vendor name additional Order Fulfillers should DIR determine it is in the best interest of the State.

c) Vendor shall be fully liable for its Order Fulfillers' performance under and compliance with the terms and conditions of the Contract. Vendor shall enter into contracts with Order Fulfillers and use terms and conditions that are consistent with the terms and conditions of the Contract.

d) Vendor shall have the right to qualify Order Fulfillers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers based upon Vendor's established, neutrally applied criteria, ii) the criteria is not based on a particular procurement, and iii) all Customers are supported under the different criteria.

e) Vendor shall not prohibit Order Filler from participating in other procurement opportunities offered through DIR.

#### **2) Changes in Order Filler List**

Vendor may add or delete Order Fulfillers throughout the term of the Contract upon written authorization by DIR. Prior to adding or deleting Order Fulfillers, Vendor must make a good faith effort in the revision of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. Vendor shall provide DIR with its updated Subcontracting Plan and the Order Filler information listed in Section 7.B.1.a above.

#### **3) Order Filler Pricing to Customer**

Order Filler pricing to the Customer shall comply with the Customer price as stated within Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee. This pricing shall

only be offered by Order Fulfillers to Customers for sales that pass through the Contract.

**C. Product Warranty and Return Policies**

Order Fulfiller will adhere to the Vendor's then-currently published policies concerning product warranties and returns. Product warranty and return policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated Customers for like products.

**D. Customer Site Preparation**

Customers shall prepare and maintain its site in accordance with written instructions furnished by Order Fulfiller prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

**E. Internet Access to Contract and Pricing Information**

**1) Vendor Webpage**

Within thirty (30) calendar days of the effective date of the Contract, Vendor will establish and maintain a webpage specific to the products and services awarded under the Contract that are clearly distinguishable from other, non-DIR Contract offerings on the Vendor's website. The webpage must include:

- a) the products and services awarded;
- b) description of product and service awarded
- c) a current price list or mechanism (for example, a services calculator or product builder) to obtain specific contracted pricing;
- d) discount percentage (%) off MSRP or List Price;
- e) designated Order Fulfillers;
- f) contact information (name, telephone number and email address) for Vendor and designated Order Fulfillers;
- g) instructions for obtaining quotes and placing Purchase Orders;
- h) warranty policies;
- i) return policies;
- j) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- k) a link to the DIR "Cooperative Contracts" webpage; and
- l) the DIR logo in accordance with the requirements of this Section.

If Vendor does not meet the webpage requirements listed above, DIR may cancel the contract without penalty.

**2) Accurate and Timely Contract Information**

Vendor warrants and represents that the website information specified in the above paragraph will be accurately and completely posted, maintained and displayed in an objective and timely manner. Vendor, at its own expense, shall correct any non-conforming or inaccurate information posted at Vendor's website within ten (10) business days after written notification by DIR.

### **3) Webpage Compliance Checks**

Periodic compliance checks of the information posted for the Contract on Vendor's webpage will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this webpage is compliant with the pricing as stated in the Contract.

### **4) Webpage Changes**

Vendor hereby consents to a link from the DIR website to Vendor's webpage in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to suspend, terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link suspension, termination or removal. Vendor shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

### **5) Use of Access Data Prohibited**

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the Contract and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

### **6) Responsibility for Content**

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

## **F. DIR Logo**

Vendor and Order Fulfiller may use the DIR logo in the promotion of the Contract to Customers with the following stipulations: (i) the logo may not be modified in any way, (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Order Fulfiller logo, (iii) the DIR logo is only used to communicate the availability of products and services under the Contract to Customers, and (iv) any other use of the DIR logo requires prior written permission from DIR.

## **G. Vendor and Order Fulfiller Logo**

If DIR receives Vendor's or Order Fulfiller's prior written approval, DIR may use the Vendor's and Order's Fulfiller's name and logo in the promotion of the Contract to communicate the availability of products and services under the Contract to Customers. Use of the logos may be on the DIR website or on printed materials. Any use of Vendor's and Order Fulfiller's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in the Contract will give DIR any right, title, or interest in or to Vendor's or Order Fulfiller's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor and Order Fulfiller.

## **H. Trade Show Participation**

At DIR's discretion, Vendor and Order Fulfillers may be required to participate in no more than two DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's and Order Fulfiller's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor and Order Fulfillers must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location or the use of the DIR logo in or on the Vendor's or Order Fulfiller's booth.

### **I. Orientation Meeting**

Within thirty (30) calendar days from execution of the Contract, Vendor and Order Fulfillers will be required to attend an orientation meeting to discuss the content and procedures of the Contract to include reporting requirements. DIR, at its discretion, may waive the orientation requirement for Vendors who have previously held DIR contracts. The meeting will be held in the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor or by teleconference, at DIR's discretion. DIR shall bear no cost for the time and travel of the Vendor or Order Fulfillers for attendance at the meeting.

### **J. Performance Review Meetings**

DIR may require the Vendor to attend periodic meetings to review the Vendor's performance under the Contract, at DIR's discretion. The meetings may be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor or by teleconference. DIR shall bear no cost for the time and travel of the Vendor for attendance at the meeting.

### **K. DIR Cost Avoidance**

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of products sold under the Contract. The report shall contain: product part number, product description, list price and price to Customer under the Contract.

## **8. Pricing, Purchase Orders, Invoices, and Payments**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

### **A. Manufacturer's Suggested Retail Price (MSRP) or List Price**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

MSRP is defined as the product sales price list published in some form by the manufacturer or publisher of a product and available to and recognized by the trade. A price list especially prepared for a given solicitation is not acceptable.

### **B. Customer Discount**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

The minimum Customer discount for all products and services will be the percentage off MSRP as specified in Appendix C, Pricing Index.

### **C. Customer Price**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR SECTION C1**

1) The price to the Customer shall be calculated as follows:

**Customer Price = (MSRP or List Price – Customer Discount as set forth in Appendix C, Pricing Index) x (1 + DIR Administrative Fee, as set forth in the Contract).**

2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

3) If pricing for products or services available under this Contract is provided by the Vendor at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) to any other customer under the same terms and conditions provided for

the State for the same commodities and services under this contract, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. Vendor shall notify DIR within ten (10) days and this Contract shall be amended to reflect the lower price.

**D. Shipping and Handling Fees**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's Destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited or special delivery, Customer will be responsible for any charges for expedited or special delivery.

**E. Tax-Exempt**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Customers shall provide evidence of tax-exempt status to Vendor upon request.

**F. Travel Expense Reimbursement**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (<http://www.window.state.tx.us/procurement/prog/stmp/>). Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in the Contract is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer. Customer reserves the right not to pay travel expenses which are not pre-approved in writing by the Customer.

**G. Changes to Prices**

Subject to the requirements of this section, Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract.

Vendor may revise its pricing (but not its discount rate, if any, and not the products or services on its contract pricing list) by posting a revised pricing list. Such revised pricing lists are subject to review by DIR. If DIR finds that a product's or service's price has been increased unreasonably, DIR may request Vendor to reduce its pricing for the product or service to the level published before the revision. Vendor must reduce its pricing, or remove the product from its pricing list. Failure to do so will constitute an act of default by Vendor.

**H. Purchase Orders**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

All Customer Purchase Orders will be placed directly with the Vendor or Order Fulfiller.

Accurate Purchase Orders shall be effective and binding upon Vendor or Order Fulfiller when accepted by Vendor or Order Fulfiller. Customer and Vendor may work together to include specific requirements as to what constitutes a valid Purchase Order.

Vendors will be required to comply with the disclosure requirements of Section 2252.908, Texas Government Code, as enacted by House Bill 1295, 84<sup>th</sup> Regular Session, when execution of a contract requires an action or vote by the governing body of a governmental entity before the contract may be signed.

#### **I. Invoices**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

1) Invoices shall be submitted by the Vendor or Order Fulfiller directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under the Contract and any provision of acceptance of such products and/or services shall be made by the Customer to the Vendor or Order Fulfiller. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Vendor will agree to acceptable terms.

2) Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the product or services by the Customer.

3) The administrative fee as set forth in the Contract shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

#### **J. Payments**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Order Fulfiller. The statute states that payments for goods and services are due thirty (30) calendar days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Vendor will agree to acceptable terms.

### **9. Contract Administration**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR A,C-D**

#### **A. Contract Managers**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

DIR and the Vendor will each provide a Contract Manager to support the Contract. Information regarding the Contract Manager will be posted on the Internet website designated for the Contract.

##### **1) State Contract Manager**

DIR shall provide a Contract Manager whose duties shall include but not be limited to: i) advising DIR and Vendor of Vendor's compliance with the terms and conditions of the Contract, ii) periodic verification of product pricing, and iii) verification of monthly reports submitted by Vendor.

##### **2) Vendor Contract Manager**

Vendor shall identify a specific Contract Manager whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute

resolution between a Order Fulfiller and a Customer, and iii) advising DIR of Order Fulfillers performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Manager if the assigned Contract Manager is not, in the reasonable opinion of DIR, adequately serving the needs of the State.

## **B. Reporting and Administrative Fees**

### **1) Reporting Responsibility**

a) Vendor shall be responsible for reporting all products and services purchased through Vendor and Order Fulfillers under the Contract. Vendor shall file the monthly reports, subcontract reports, and pay the administrative fees in accordance with the due dates specified in this section.

b) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to compliance checks of Vendor's applicable Contract. Vendor will provide all required documentation at no cost.

### **2) Detailed Monthly Report**

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous calendar month period. Reports are due on the fifteenth (15<sup>th</sup>) calendar day of the month following the month of the sale. If the 15<sup>th</sup> calendar day falls on a weekend or state or federal holiday, the report shall be due on the next business day. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the estimated administrative fee for the reporting period, subcontractor name, EPEAT designation (if applicable), configuration (if applicable), contract discount percentage, actual discount percentage, negotiated contract price (if fixed price is offered instead of discount off of MSRP), and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section. Vendor shall report in a manner required by DIR which is subject to change dependent upon DIR's business needs. Failure to do so may result in contract termination.

### **3) Historically Underutilized Businesses Subcontract Reports**

a) Vendor shall electronically provide each Customer with Vendor's relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.

b) Reports shall be due in accordance with the CPA rules.

### **4) DIR Administrative Fee**

a) The Vendor shall pay an administrative fee to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. DIR will review Vendor monthly sales reports, close the sales period, and notify the Vendor of the administrative fee no later than the fourteenth (14<sup>th</sup>) day of the second month following the date of the reported sale. Vendor shall pay the administrative fee by the twenty-fifth (25<sup>th</sup>) calendar day of the second month following the date of the reported sale. For example, Vendor reports January sales by February 15<sup>th</sup>; DIR closes January sales and notifies Vendor of administrative fee by March 14<sup>th</sup>; Vendor submits administrative fee for January sales by March 25<sup>th</sup>.

b) DIR may change the amount of the administrative fee upon thirty (30) calendar days



written notice to Vendor without the need for a formal contract amendment.

c) Vendor shall reference the DIR Contract number, reporting period, and administrative fee amount on any remittance instruments.

**5) Accurate and Timely Submission of Reports**

a) The reports and administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or administrative fee payments within three (3) business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within three (3) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or administrative fee payments or deliver late reports and fee payments within three (3) business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.

b) Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section, at Vendor's expense. DIR will select the auditor (and all payments to auditor will require DIR approval).

Failure to timely submit three (3) reports or administrative fee payments within any rolling twelve (12) month period may, at DIR's discretion, result in the addition of late fees of \$100/day for each day the report or payment is due (up to \$1000/month) or suspension or termination of Vendor's Contract..

**C. Records and Audit**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED IN SUBPARAGRAPH ONE (1)**

1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller acts as acceptance of the authority of the State Auditor's Office, or any successor agency or designee, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor or designee in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

2) Vendor and Order Fulfillers shall maintain adequate records to establish compliance with the Contract until the later of a period of seven (7) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, MSRP or list price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books,

documents, accounting procedures, practices, customer records including but not limited to contracts, agreements, purchase orders and statements of work, and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

4) For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Order Fulfillers through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's administrative fee is correct.

#### **D. Contract Administration Notification**

1) Prior to execution of the Contract, Vendor shall provide DIR with written notification of the following: i) Vendor Contract Administrator name and contact information, ii) Vendor sales representative name and contact information, and iii) name and contact information of Vendor personnel responsible for submitting reports and payment of administrative fees specified herein.

2) Upon execution of the Contract, DIR shall provide Vendor with written notification of the following: i) DIR Contract Administrator name and contact information, and ii) DIR Cooperative Contracts E-Mail Box information.

### **10. Vendor Responsibilities**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED IN C-M, O-S, V-W**

#### **A. Indemnification**

##### **1) INDEPENDENT CONTRACTOR**

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING PRODUCTS AND SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER OR THE STATE OF TEXAS.

##### **2) ACTS OR OMISSIONS**

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or

performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

### **3) INFRINGEMENTS**

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

### **4) PROPERTY DAMAGE**

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY PROPERTY OF CUSTOMER OR THE STATE DUE TO THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF THE VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, THE VENDOR SHALL PAY THE FULL COST OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S SOLE ELECTION. SUCH COST SHALL BE DETERMINED BY THE CUSTOMER AND SHALL BE DUE AND PAYABLE BY THE VENDOR NINETY (90) CALENDAR DAYS AFTER THE DATE OF THE VENDORS RECEIPT FROM THE CUSTOMER OF A WRITTEN NOTICE OF THE AMOUNT DUE.

**B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE**

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

**C. Vendor Certifications**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

Vendor certifies on behalf of Vendor and its designated Order Fulfillers that they:

- (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;
- (ii) are not currently delinquent in the payment of any franchise tax owed the State and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;
- (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract;
- (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to

receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;

- (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;
- (vii) Vendor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;
- (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- (ix) Vendor represents and warrants that, for its performance of this contract, it shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Texas Government Code, Section 2155.4441;
- (x) agrees that all equipment and materials used in fulfilling the requirements of this contract are of high-quality and consistent with or better than applicable industry standards, if any. All Works and Services performed pursuant to this Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;
- (xi) to the extent applicable to this scope of this Contract, Vendor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;
- (xii) agree that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (xiii) are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- (xiv) represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that they will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify they shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
- (xv) under Section 2155.006, and Section 2261.053, Texas Government Code, are not ineligible to receive the specified contract and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate;
- (xvi) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, they acknowledge the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract; and
- (xvii) represent and warrant that the Customer's payment and their receipt of

appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code; and

- (xviii) to the extent applicable to this scope of this contract, Vendor hereby certifies that it is authorized to sell and provide warranty support for all products and services listed in Appendix C of this contract; and
- (xix) represent and warrant that in accordance with Section 2270.002 of the Texas Government Code, by signature hereon, Vendor does not boycott Israel and will not boycott Israel during the term of this Contract.

During the term of the Contract, Vendor shall, for itself and on behalf of its Order Fulfillers, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Vendor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties.

In addition, Vendor understands and agrees that if Vendor responds to certain Customer pricing requests or Statements of Work, then, in order to contract with the Customer, Vendor may be required to comply with additional terms and conditions or certifications that an individual customer may require due to state and federal law (e.g., privacy and security requirements).

#### **D. Ability to Conduct Business in Texas**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

Vendor and its Order Fulfiller shall be authorized and validly existing under the laws of its state of organization, and shall be authorized to do business in the State of Texas in accordance with Texas Business Organizations Code, Title 1, Chapter 9.

#### **E. Equal Opportunity Compliance**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. If Vendor is found to be not in compliance with these requirements during the term of the Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

#### **F. Use of Subcontractors**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses (HUB). A revised Subcontracting Plan approved by DIR's HUB Office shall be required before Vendor can engage additional subcontractors in the performance of this Contract. A revised Subcontracting Plan approved by DIR's HUB Office shall be required before Vendor can remove subcontractors currently engaged in the performance of this Contract. Vendor shall remain solely responsible for the performance of

its obligations under the Contract.

#### **G. Responsibility for Actions**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

- 1) Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.
- 2) Vendor, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under Certification Statement of Exhibit A to the RFO and/or Section 10.C. (xiii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose the status of conflicts of interest.

#### **H. Confidentiality**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

- 1) Vendor acknowledges that DIR and Customers that are governmental bodies as defined by Texas Government Code, Section 552.003 are subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are governmental bodies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.
- 2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

#### **I. Security of Premises, Equipment, Data and Personnel**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

#### **J. Background and/or Criminal History Investigation**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by the Customer.. Should any employee or subcontractor of the Vendor and/or Order Fulfiller who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

#### **K. Limitation of Liability**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**



For any claims or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

#### **L. Overcharges**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

Vendor hereby assigns to DIR any and all of its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

#### **M. Prohibited Conduct**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

Vendor represents and warrants that, to the best of its knowledge as of the date of this certification, neither Vendor nor any Order Fulfiller, subcontractor, firm, corporation, partnership, or institution represented by Vendor, nor anyone acting for such Order Fulfiller, subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

#### **N. Required Insurance Coverage**

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that have an A rating and a Financial Size Category Class of VII from A.M. Best and are licensed in the State of Texas and authorized to provide the corresponding coverage. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

##### **1) Commercial General Liability**

Commercial General Liability must include \$1,000,000 per occurrence for Bodily Injury and Property Damage, with a separate aggregate limit of \$2,000,000; Medical Expense per person of \$5,000; Personal Injury and Advertising Liability of \$1,000,000; Products/Completed Operations Aggregate Limit of \$2,000,000; and Damage to Premises Rented: \$50,000. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured; and
- d) Waiver of Subrogation

## 2) Workers' Compensation Insurance

**WORKERS' COMPENSATION INSURANCE AND EMPLOYERS' LIABILITY COVERAGE MUST INCLUDE LIMITS CONSISTENT WITH STATUTORY BENEFITS OUTLINED IN THE TEXAS WORKERS' COMPENSATION ACT (ART. 8308-1.01 ET SEQ. TEX. REV. CIV. STAT) AND MINIMUM POLICY LIMITS FOR EMPLOYERS' LIABILITY OF \$1,000,000 BODILY INJURY PER ACCIDENT, \$1,000,000 BODILY INJURY DISEASE PER EMPLOYEE AND \$1,000,000 PER DISEASE POLICY LIMIT.**

## 3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation; and
- b) Additional Insured.

## O. Use of State Property

### **Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

Vendor is prohibited from using the Customer's equipment, the customer's location, or any other resources of the Customer or the State for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State long distance services. Any charges incurred by Vendor using the Customer's equipment for any purpose other than performing services under this Agreement must be fully reimbursed by Vendor to the Customer immediately upon demand by the Customer. Such use shall constitute breach of contract and may result in termination of the contract and other remedies available to DIR and Customer under the contract and applicable law.

## P. Immigration

### **Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

The Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under this Contract.

Pursuant to Executive Order No. RP-80, issued by the Governor of Texas on December 3, 2014, and as subsequently clarified, the Vendor shall, as a condition of this Contract, also comply with the United States Department of Homeland Security's E-Verify system to determine the eligibility of:

- all persons 1) to whom the E-Verify system applies, and 2) who are hired by the Vendor during the term of this Contract to perform duties within Texas; and

- all subcontractors' employees 1) to whom the E-Verify system applies, and 2) who are hired by the subcontractor during the term of this Contract and assigned by the subcontractor to perform work pursuant to this Contract.

The Vendor shall require its subcontractors to comply with the requirements of this Section and the Vendor is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Vendor and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

#### **Q. Public Disclosure**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

No public disclosures or news releases pertaining to this contract shall be made by Vendor without prior written approval of DIR.

#### **R. Product and/or Services Substitutions**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

Substitutions are not permitted without the written permission of DIR or Customer.

#### **S. Secure Erasure of Hard Disk Products and/or Services**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

Vendor agrees that all products and/or services equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such products and/or services, either at the end of the Customer's Managed Services product's useful life or the end of the related Customer Managed Services Agreement for such products and/ services, in accordance with 1 TAC 202.

#### **T. Deceptive Trade Practices; Unfair Business Practices**

1) Vendor represents and warrants that neither Vendor nor any of its Subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

2) Vendor certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

#### **U. Drug Free Workplace Policy**

Vendor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §§8101-8106) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (Financial Assistance), issued by the Office of Management and Budget (2 C.F.R. Part 182) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

#### **V. Accessibility of Public Information**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

- 1) Pursuant to S.B. 1368 of the 83<sup>rd</sup> Texas Legislature, Regular Session, Vendor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
- 2) Each State government entity should supplement the provision set forth in Subsection 1, above, with the additional terms agreed upon by the parties regarding the specific format by which the Vendor is required to make the information accessible by the public.

#### **W. Vendor Reporting Requirements**

##### **Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

Vendor shall comply with Subtitle C, Title 5, Business & Commerce Code, Chapter 109 as added by HB 2539 of the 83<sup>rd</sup> Texas Legislature, Regular Session, requiring computer technicians to report images of child pornography.

### **11. Contract Enforcement**

#### **Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED TO A, B2, 5-7**

#### **A. Enforcement of Contract and Dispute Resolution**

##### **Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

- 1) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.
- 2) Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing.
- 3) State agencies are required by rule (34 TAC §20.115) to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over \$25,000.

#### **B. Termination**

##### **Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR 2, 5-7**

##### **1) Termination for Non-Appropriation**

###### **a) Termination for Non-Appropriation by Customer**

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

#### **b) Termination for Non-Appropriation by DIR**

DIR may terminate Contract if funds sufficient to pay its obligations under the Contract are not appropriated: by the i) Texas legislature or ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

#### **2) Absolute Right**

##### **Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 12.A, Notices, of intent to terminate.

#### **3) Termination for Convenience**

DIR may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order or other contractual document or relationship by giving the other party thirty (30) calendar days written notice.

#### **4) Termination for Cause**

##### **a) Contract**

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the Contract for default.

##### **b) Purchase Order**

Customer or Order Fulfiller may terminate a Purchase Order or other contractual document or relationship upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or other contractual document or relationship in accordance with Section 4.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas

Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party ten (10) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order. Customer may immediately suspend or terminate a Purchase Order without advance notice in the event Vendor fails to comply with confidentiality, privacy, security requirements, environmental or safety laws or regulations, if such non-compliance relates or may relate to vendor provision of goods or services to the Customer.

#### **5) Immediate Termination or Suspension**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

DIR may immediately suspend or terminate this Contract without advance notice if DIR receives notice or knowledge of potentially criminal violations by Vendor or Order Fulfiller (whether or not such potential violations directly impact the provision of goods or services under this Contract). In such case, the Vendor or Order Fulfiller may be held ineligible to receive further business or payment but may be responsible for winding down or transition expenses incurred by Customer. DIR or Customer will use reasonable efforts to provide notice (to the extent allowed by law) to vendor within five (5) business days after imposing the suspension or termination. Vendor may provide a response and request an opportunity to present its position. DIR or Customer will review vendor presentation, but is under no obligation to provide formal response.

#### **6) Customer Rights Under Termination**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and the Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract for its then effective term.

#### **7) Vendor or Order Fulfiller Rights Under Termination**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

In the event a Purchase Order expires or is terminated, a Customer shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately accepted, and 2) any applicable early termination fees agreed to in such Purchase Order.

### **C. Force Majeure**

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

## **12. Notification**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

### **A. Notices**

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a party at the respective address indicated in Section 6 of the Contract or to such other address as such party shall have notified the other party in writing.

### **B. Handling of Written Complaints**

In addition to other remedies contained in the Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office  
Department of Information Resources  
Attn: Public Information Officer  
300 W. 15<sup>th</sup> Street, Suite 1300  
Austin, Texas 78701  
(512) 475-4759, facsimile

## **13. Captions**

**Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED**

The captions contained in the Contract, Appendices, and its Exhibits are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.





# HUB SUBCONTRACTING PLAN (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

**NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).**

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

## - - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only contracts that have been in place for five years or less shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

**Failure to complete and comply with the current HSP form may disqualify the respondents proposal pursuant to Texas Gov't Code §2161.252(b). The HSP form cannot be altered.**

**I. DIR's HUB Goal for this bidding opportunity is 21.1 %**

### **II. HSP Form:**

RFO HSPs- must utilize the HSP provided

Amended HSPs- must utilize the HSP that is on the DIR website

### **II. The following documentation should be completed with the HSP:**

- 1) HSP Section 2- identify subcontracting opportunities including "Order fulfiller" (reference Appendix A)
- 2) HSP Section 4 Affirmation- must be signed and dated;
- 3) HSP Method B (Attachment B) -must provide documentation under Section B-3 with response (if applicable);
- 4) Actual % and dollar amounts must be used on HSP form (if applicable); no TBDs

**III. For assistance in completing the HSP, contact the HUB Coordinator, at dir.hub@dir.texas.gov or lisa.maldonado@dir.texas.gov 512-463-5662 or lynn.sanchez@dir.texas.gov 512-463-9813.**

## **SECTION 1 RESPONDENT AND REQUISITION INFORMATION**

- a. Respondent (Company) Name: TASER International, Inc. State of Texas VID #: \_\_\_\_\_
- Point of Contact: Bobby Driscoll Phone #: 800/978-2737
- E-mail Address: Contracts@taser.com Fax #: 480/991-0791
- b. Is your company a State of Texas certified HUB? ☐ - Yes ☒ - No
- c. Requisition/ Contract # DIR-TSO-TMP-226 Bid Open/ Revision Date: 7/2/15

**SECTION 2 SUBCONTRACTING INTENTIONS**

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including goods and services, will be subcontracted. Note: In accordance with 34 TAC §20.11., an "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

☐ - **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b, of this SECTION and continue to Item c of this SECTION.)

☒ - **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources. (If **No**, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for five (5) years or less.	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>).

c. Check the appropriate box (Yes or No) that indicates whether you will be using only Texas certified HUBs to perform all of the subcontracting opportunities you listed in SECTION 2, Item b.

☐ - **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)

☐ - **No** (If **No**, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the **aggregate expected percentage** of the contract you will subcontract with Texas certified HUBs with which you have a continuous contract\* in place with for five (5) years or less **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements".

☐ - **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)

☐ - **No** (If **No**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

**\*Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: \_\_\_\_\_

Requisition /Contract #: \_\_\_\_\_

**SECTION-2: SUBCONTRACTING INTENTIONS RESPONDENT (CONTINUATION SHEET)**

**a.n** This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>five (5) years or less.</u>	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years.</u>	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

*\*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*

Enter your company's name here: TASER International

Requisition/contract #: DIR-TSO-TMP-226 <sup>Rev. 10/14</sup>

### SECTION 3 SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.)

Check the appropriate box (Yes or No) that indicates whether your response/proposal contains an explanation demonstrating how your company will fulfill the entire contract with its own resources.

- ☐ - **Yes** (If **Yes**, in the space provided below **list the specific page(s)/section(s)** of your proposal which explains how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)
- ☒ - **No** (If **No**, in the space provided below **explain how** your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)

TASER International is the sole manufacturer and domestic distributor of our Axon Body cameras and Evidence.com storage solution. We will be providing all products and services. All orders are processed and hardware delivered from our corporate headquarters and manufacturing facility in Scottsdale, AZ.

### SECTION 4 AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature on File

Signature  
(mm/dd/yyyy)

Alison Davidson

Printed Name

VP Sales Ops

Title

6/29/15

Date

- REMINDER:** ➤ If you responded "**Yes**" to **SECTION 2, Items c or d**, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "**No**" **SECTION 2, Items c and d**, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b.



# HSP Good Faith Effort - Method B (Attachment B)

Rev. 10/14

Enter your company's name here: \_\_\_\_\_ Requisition/Contract #: \_\_\_\_\_

**IMPORTANT:** If you responded "No" to SECTION 2, Items c and d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanAttachment-B.doc>

## SECTION B-1 SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing this attachment.

Item #: \_\_\_\_\_ Description: \_\_\_\_\_

## SECTION B-2 MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in SECTION B-1, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

☐ - Yes (If Yes, to continue to SECTION B-4.)

☐ - No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

## SECTION B-3 NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you MUST comply with items a, b, c and d, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and minority or women trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and minority or women trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the minority or women trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to your submitting your bid response to the contracting agency. When searching for Texas certified HUBs, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Search directory located at <http://www.window.state.tx.us/procurement/cmb/cmbhub.html>. HUB Status code "A" signifies that the company is a Texas certified HUB.
- b. List the three (3) Texas certified HUBs you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Vendor ID (VID) number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	VID #	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more minority or women trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to minority or women trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>
- d. List two (2) minority or women trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Minority/Women Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No

# HSP Good Faith Effort - Method B (Attachment B) *Cont.*

Rev. 10/14

Enter your company's name here: \_\_\_\_\_ Requisition/Contract #: \_\_\_\_\_

## SECTION B-4 SUBCONTRACTOR SELECTION

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item #: \_\_\_\_\_ Description: \_\_\_\_\_

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB.

Company Name	Texas certified HUB	VID # (Required if Texas certified HUB)	Approximate Dollar Amount (no TBDs)	Expected Percentage of Contract (no TBDs)
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

**REMINDER:** As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.





# HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in **Section B** has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.14 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in **Section C, Item 2**, reply no later than the date and time identified in **Section C, Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

**Section A****PRIME CONTRACTOR'S INFORMATION**

Company Name: \_\_\_\_\_ State of Texas VID #: \_\_\_\_\_  
Point-of-Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_ Fax #: \_\_\_\_\_

**Section B****CONTRACTING STATE AGENCY AND REQUISITION INFORMATION**

Agency Name: \_\_\_\_\_  
Point-of-Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_  
Requisition/Contract #: \_\_\_\_\_ Bid Open Date: \_\_\_\_\_

**SECTION: C SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION****1. Potential Subcontractor's Bid Response Due Date:**

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2, we must receive your bid response no later than \_\_\_\_\_ on \_\_\_\_\_.  
Central Time Date (mm/dd/yyyy)

*In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C).  
(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)*

**2. Subcontracting Opportunity Scope of Work:**

3. Required Qualifications: ☐ - Not Applicable

4. Bonding/Insurance Requirements: ☐ - Not Applicable

5. Location to review plans/specifications: ☐ - Not Applicable

**APPENDIX C PRICING INDEX**  
**DIR-TSO-3561 Amendment 3**  
**AXON ENTERPRISE, INC.**  
 formerly  
**TASER INTERNATIONAL, INC.**

Category	Order Quantity	DIR Customer Discount % off MSRP*
Axon Body 2	1	0.00%
	2-99	1.00%
	100-249	3.00%
	250-499	5.00%
	500-999	7.00%
	1000+	10.00%
Axon Fleet	1	0.00%
	2-99	1.00%
	100-249	3.00%
	250-499	5.00%
	500-999	7.00%
	1000+	10.00%
Axon Flex 2	1	0.00%
	2-99	1.00%
	100-249	3.00%
	250-499	5.00%
	500-999	7.00%
	1000+	10.00%
Dock	1	0.00%
	2-99	1.00%
	100-249	3.00%
	250-499	5.00%
	500-999	7.00%
	1000+	10.00%
E.com Services	1	0.00%
	2-99	1.00%
	100-249	3.00%
	250-499	5.00%
	500-999	7.00%
	1000+	10.00%
Interview Room	1	0.00%
	2-99	1.00%
	100-249	3.00%
	250-499	5.00%
	500-999	7.00%
	1000+	10.00%
Signal Sidearm	1	0.00%
	2-99	1.00%
	100-249	3.00%
	250-499	5.00%
	500-999	7.00%
	1000+	10.00%

\*

Itemized Price List is located at <https://www.axon.com/info/texas>



**DIR-TSO-3561**

**APPENDIX D**

**MASTER SERVICES AND PURCHASING AGREEMENT**

Customer Agreement Number:

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## APPENDIX D OF DIR-TSO-3561

### MASTER SERVICES AND PURCHASING AGREEMENT

This Master Agreement (the **Agreement**) by and between TASER International, Inc., (**TASER or Party**) a Delaware corporation having its principal place of business at 17800 N 85<sup>th</sup> Street, Scottsdale, Arizona, 85255, and the Customer listed on the Quote , (**Customer, Party** or collectively **Parties**), is entered into as of Effective Date (**the Effective Date**).

DIR Contract No. DIR-TSO-3561 and this Agreement sets forth the terms and conditions for the purchase, delivery, use, and support of TASER products and services as detailed in Quote # \_\_\_\_\_ (the **Quote**), which is hereby incorporated by reference. In consideration of this Agreement the Parties agree as follows:

1 **Term.** This Agreement will commence on the Effective Date and will remain in full force and effect until terminated in accordance with Appendix A, Section 11B of DIR Contract No. DIR-TSO-3561. TASER services will not be authorized until a signed Quote or Purchase Order is received, whichever is first.

1.1 **Evidence.com Subscription Term:** The Initial Term of the Subscription services will begin after shipment of the Product. If shipped in 1st half of the month, the start date is on the 1st of the following month. If shipped in the last half of the month, the start date is on the 15th of the following month. Subscription Services will automatically renew for additional successive Terms of one (1) year after completion of the initial Term at the list price then in effect, unless the Agency gives TASER written notice of termination within sixty (60) days prior to the end of a one (1) year period. .

1.2 **Technical Services Term:** Amounts paid for technical services as outlined in the Quote and the Technical Service Exhibit must be used within 6 months of the Effective Date.

2 **Definitions.**

**“Business Day”** means Monday through Friday, excluding holidays.

**“Confidential Information”** means all nonpublic information disclosed by TASER, TASER affiliates, business partners of TASER or their respective employees, contractors or agents that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential.

**“Documentation”** means the (i) specifications, explanatory or informational materials, whether in paper or electronic form, that relate to the Services provided under this Agreement, or (ii) user manuals, technical manuals, training manuals, warnings, specification or other explanatory or informational materials, whether in paper or electronic form, that relate to the Products provided under this Agreement.

**“Evidence.com Service”** means TASER web services for Evidence.com, the Evidence.com site, EVIDENCE Sync software, Axon Capture App, Axon® Mobile App, other software, maintenance, storage, and product or service provided by us under this Agreement for use with

Evidence.com. This does not include any Third Party Applications, hardware warranties, or the my.evidence.com services.

**“Installation Site”** means the location(s) where the Products are to be installed.

**“Policies”** means the Trademark Use Guidelines, all restrictions described on the TASER website, and any other policy or terms referenced in or incorporated into this Agreement. Policies do not include whitepapers or other marketing materials.

**“Products”** means all TASER equipment, software, cloud based services, Documentation and software maintenance releases and updates provided by TASER under this Agreement.

**“Quote”** is an offer to sell, is valid only for products and services listed on the quote at prices as provided on Appendix C of DIR-TSO-3561. All Quotes referenced in this Agreement or issued and accepted after the Effective Date of this Agreement will be subject to the terms of DIR Contract No. DIR-TSO-3561 and this Agreement. Any terms and conditions contained within the Customer’s purchase order in response to the Quote will be null and void and shall have no force or effect unless otherwise agreed between TASER and the Customer.

**“Resolution Time”** means the elapsed time between TASER’s acknowledgment of an issue until the problem in the Services has been resolved, which does not include time delays caused by the Customer or by third parties outside of TASER’s reasonable control.

**“Services”** means all services provided by TASER pursuant to this Agreement.

**“Customer Content”** means software, data, text, audio, video, images or other Customer content or any of the Customer’s end users (a) run on the Evidence.com Services, (b) cause to interface with the Evidence.com Services, or (c) upload to the Evidence.com Services under the Customer account or otherwise transfer, process, use or store in connection with the Customer account.

- 3 **Payment Terms.** Payment shall be handled in accordance with Appendix A, Section 8J, of DIR Contract No. DIR Contract No. DIR-TSO-3561
- 4 **Taxes.** Taxes shall be handled in accordance with DIR-TSO-XXX Appendix A, DIR Standard Terms and Conditions for Product and Related Services Contracts, Section 8.E, Tax-Exempt.
- 5 **Shipping; Title; Risk of Loss; Rejection.** TASER reserves the right to make partial shipments and products may ship from multiple locations. Shipping and handling shall be handled in accordance with Appendix A, Section 8D of DIR Contract No. DIR Contract No. DIR-TSO-3561. Shipping dates are estimates only. The Customer may reject ~~nonconforming Product~~ by providing TASER written notice of rejection within 10 days of shipment. Failure to notify TASER within the 10 day rejection period will be deemed as acceptance of Product.
- 6 **Returns.** All sales are final and no refunds or exchanges are allowed, except for warranty returns or as provided by state or federal law.

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**7****Warranties.**

**7.1 Hardware Limited Warranty.** TASER warrants that its law enforcement hardware products are free from defects in workmanship and materials for a period of ONE (1) YEAR from the date of receipt. Extended warranties run from the date of purchase of the extended warranty through the balance of the 1-year limited warranty term plus the term of the extended warranty measured after the expiration of the 1-year limited warranty. CEW cartridges and Smart cartridges that are expended are deemed to have operated properly. TASER-Manufactured Accessories are covered under a limited 90-DAY warranty from the date of receipt. Non-TASER manufactured accessories are covered under the manufacturer's warranty. If TASER determines that a valid warranty claim is received within the warranty period, TASER agrees to repair or replace the Product. TASER's sole responsibility under this warranty is to either repair or replace with the same or like Product, at TASER's option.

**7.2 Warranty Limitations.**

**7.2.1** The warranties do not apply and TASER will not be responsible for any loss, data loss, damage, or other liabilities arising from: (a) damage from failure to follow instructions relating to the Product's use; (b) damage caused by use with non-TASER products or from the use of cartridges, batteries or other parts, components or accessories that are not manufactured or recommended by TASER; (c) damage caused by abuse, misuse, intentional or deliberate damage to the product, or force majeure; (d) damage to a Product or part that has been repaired or modified by persons other than TASER authorized personnel or without the written permission of TASER; or (e) if any TASER serial number has been removed or defaced.

**7.2.2 To the extent permitted by law, the warranties and the remedies set forth above are exclusive and TASER disclaims all other warranties, remedies, and conditions, whether oral or written, statutory, or implied, as permitted by applicable law. If statutory or implied warranties cannot be lawfully disclaimed, then all such warranties are limited to the duration of the express warranty described above and limited by the other provisions contained in this Agreement.**

**7.2.3** For any claims or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) TASER's liability for damages of any kind to the Customer shall be limited to the total amount paid to TASER under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of bodily injury or property loss or damage due to TASER's negligence, or wrongful action or inaction, or product defect; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

**7.3 Warranty Returns.** If a valid warranty claim is received by TASER within the warranty

period, TASER agrees to repair or replace the Product which TASER determines to be defective under normal use, as defined in the Product instructions. TASER's sole responsibility under this warranty is to either repair or replace with the same or like Product, at TASER's option.

**7.3.1** For warranty return and repair procedures, including troubleshooting guides, please go to TASER's websites [www.taser.com/support](http://www.taser.com/support) or [www.evidence.com](http://www.evidence.com), as indicated in the appropriate product user manual or quick start guide.

**7.3.2** Before delivering product for warranty service, it is the Customer's responsibility to upload the data contained in the product to the EVIDENCE.com services or download the product data and keep a separate backup copy of the contents. TASER is not responsible for any loss of software programs, data, or other information contained on the storage media or any other part of the product services.

**7.3.3** A replacement product will be new or like new and have the remaining warranty period of the original product or 90 days from the date of replacement or repair, whichever period is longer. When a product or part is exchanged, any replacement item becomes Customer's property and the replaced item becomes TASER's property.

**8** **Product Warnings.** See our website at [www.TASER.com](http://www.TASER.com) for the most current product warnings.

**9** **Design Changes.** TASER reserves the right to make changes in the design of any of TASER's products and services without incurring any obligation to notify the Customer or to make the same change to products and services previously purchased.

**10** **Insurance.** TASER will maintain and will provide certificates of insurance in accordance with Appendix A of DIR Contract No. DIR Contract No. DIR-TSO-3561.

**11** **Indemnification.** Indemnification shall be handled in accordance with Appendix A, Section 10A of DIR Contract No. DIR Contract No. DIR-TSO-3561.

**12** **IP Rights.** TASER owns and reserves all right, title, and interest in the TASER Products and related software, as well as any suggestions made to TASER.

**13** **IP Indemnification.**  
Indemnification shall be handled in accordance with Appendix A, Section 10A of DIR Contract No. DIR Contract No. DIR-TSO-3561.

**14** **Customer Responsibilities.** The Customer is responsible for (i) use of TASER Products (including any activities under the Customer Evidence.com account and use by Customer employees and agents), (ii) breach of this Agreement or violation of applicable law by the Customer or any of the Customer's end users, (iii) Customer Content or the combination of Customer Content with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third party rights by Customer Content or by the use of Customer Content, (iv) a dispute between the Customer and any third party over Customer use of TASER products or the collection or use of Customer Content, (v) any hardware or networks that the Customer connects to the Evidence.com Services, and (vi) any



security settings the Customer establishes to interact with or on the Evidence.com Services.

**15     Termination.**

**15.1**     Terminate will be handled in accordance with Appendix A, Section 11B of DIR Contract No. DIR Contract No. DIR-TSO-3561.

**15.2     Effect of Termination.** Upon any termination of this Agreement: (a) all Customer rights under this Agreement immediately terminate; (b) the Customer remains responsible for all fees and charges incurred through the date of termination; and (c) Payment Terms, Warranty, Product Warnings, Indemnification, and Customer Responsibilities Sections, as well as the Evidence.com Terms of Use Appendix Sections on Customer Owns Customer Content, Data Storage, Fees and Payment, Software Services Warranty, IP Rights and License Restrictions will continue to apply in accordance with Appendix A, Section 4.E of DIR Contract No. DIR Contract No. DIR-TSO-3561 I.

**15.3     After Termination.** TASER will not delete any Customer Content as a result of a termination during a period of 90 days following termination. During this 90-day period the Customer may retrieve Customer Content only if all amounts due have been paid (there will be no application functionality of the Evidence.com Services during this 90- day period other than the ability to retrieve Customer Content). The Customer will not incur any additional fees if Customer Content is downloaded from Evidence.com during this 90-day period. TASER has no obligation to maintain or provide any Customer Content after this 90-day period and will thereafter, unless legally prohibited, delete all of Customer Content stored in the Evidence.com Services. Upon request, TASER will provide written proof that all Customer Content has been successfully deleted and fully removed from the Evidence.com Services.

**15.4     Post-Termination Assistance.** TASER will provide Customer with the same post-termination data retrieval assistance that TASER generally makes available to all customers. Requests for TASER to provide additional assistance in downloading or transferring Customer Content will result in additional fees and TASER will not warrant or guarantee data integrity or readability in the external system.

**16     General.**

**16.1     Confidentiality.** Confidentiality shall be handled in accordance with Appendix A, Section 10H of DIR Contract No. DIR Contract No. DIR-TSO-3561. Both Parties will take all reasonable measures to avoid disclosure, dissemination, or unauthorized use of either Party's Confidential Information. Confidentiality of Customer's information shall be perpetual; however, after expiration or termination of the Contract, TASER may return or destroy all confidential information of the Customer and certify that such return or destruction.

**16.2     Excusable Delays.** Delays shall be handled in accordance with Appendix A, Section 11C of DIR Contract No. DIR-TSO-3561.

**16.3     Force Majeure.** Force Majeure shall be handled in accordance with Appendix A, Section 11C of DIR Contract No. DIR Contract No. DIR-TSO-3561.

**16.4     Proprietary Information.** The Customer acknowledges that TASER claims various

proprietary rights in the hardware, firmware, software, and the integration of ancillary materials, knowledge, and designs that constitute TASER products and services, and that the Customer will not directly or indirectly cause any proprietary rights to be violated.

- 16.5 Independent Contractors.** The Parties are independent contractors. Neither Party, nor any of their respective affiliates, has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, Customer, fiduciary, or employment relationship between the Parties.
- 16.6 No Third Party Beneficiaries.** This Agreement does not create any third party beneficiary rights in any individual or entity that is not a party to this Agreement.
- 16.7 Non-discrimination and Equal Opportunity.** During the performance of this Agreement, neither the Parties nor the Party's employees will discriminate against any person, whether employed by a Party or otherwise, on the basis of basis of race, color, religion, gender, age, national origin, handicap, marital status, or political affiliation or belief. In all solicitations or advertisements for employees, agents, subcontractors or others to be engaged by a Party or placed by or on behalf of a Party, the solicitation or advertisement shall state all qualified applicants shall receive consideration for employment without regard to race, color, religion, gender, age, national origin, handicap, marital status, or political affiliation or belief.
- 16.8 U.S. Government Rights.** Any Evidence.com Services provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" will have the same rights and restrictions generally applicable to the Evidence.com Services. If the Customer is using the Evidence.com Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, the Customer will immediately discontinue use of the Evidence.com Services. The terms "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data" are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.
- 16.9 Import and Export Compliance.** In connection with this Agreement, each Party will comply with all applicable import, re- import, export, and re-export control laws and regulations.
- 16.10 Assignment.** Assignment shall be handled in accordance with Appendix A, Section 4D of DIR Contract No. DIR Contract No. DIR-TSO-3561.
- 16.11 No Waivers.** The failure by either Party to enforce any provision of this Agreement will not constitute a present or future waiver of the provision nor limit the Party's right to enforce the provision at a later time.
- 16.12 Severability.** This Agreement is contractual and not a mere recital. If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect.

**16.13 Governing Law; Venue.** The laws of the state of Texas, govern this Agreement and any dispute of any sort that might arise between the Parties. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

**16.14 Notices.** All notices shall be handled in accordance with Appendix A, Section 12 of DIR Contract No. DIR-TSO-3561

**16.15 Entire Agreement.** DIR-TSO-3561 and its appendices, this Agreement including the EXHIBITS attached hereto, and the quote provided by TASER, represents the entire agreement between the Parties. DIR-TSO-3561 supersedes this Agreement, then this Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between the Parties, whether written or verbal, regarding the subject matter of this Agreement. No modification or amendment of any portion of this Agreement will be effective unless in writing and signed by the Parties to this Agreement. If TASER provides a translation of the English language version of this Agreement, the English language version of the Agreement will control if there is any conflict.

**16.16 Counterparts.** If this Agreement form requires the signatures of the Parties, then this Agreement may be executed by electronic signature in multiple counterparts, each of which is considered an original.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed. Each Party warrants and represents that its respective signatories whose signatures appear below have been and are, on the date of signature, duly authorized to execute this Agreement.

**TASER International, Inc.**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Address:

17800 N. 85th Street Scottsdale, AZ 85255

Attn: Contracts

Email: [contracts@taser.com](mailto:contracts@taser.com)

**CUSTOMER NAME**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Address: Address, City, State, Zip Code

**Appendix D of DIR-TSO-3561**  
**Evidence.com Terms of Use**  
**Exhibit A**

- 1     **Access Rights.** Upon the purchase or granting of a subscription from TASER and the opening of an Evidence.com account the Customer will have access and use of the Evidence.com Services for the storage and management of Customer Content during the subscription term (**Term**). The Evidence.com Service and data storage are subject to usage limits. The Evidence.com Service may not be accessed by more than the number of end users specified in the Quote. If Customer becomes aware of any violation of this Agreement by an end user, the Customer will immediately terminate that end user's access to Customer Content and the Evidence.com Services.
  
- 2     **Customer Owns Customer Content.** The Customer controls and owns all right, title, and interest in and to Customer Content and TASER obtains no rights to the Customer Content and the Customer Content are not business records of TASER. The Customer is solely responsible for the uploading, sharing, withdrawal, management and deletion of Customer Content. TASER will have limited access to Customer Content solely for the purpose of providing and supporting the Evidence.com Services to the Customer and Customer end users. The Customer represents that the Customer owns Customer Content; and that none of Customer Content or Customer end users' use of Customer Content or the Evidence.com Services will violate this Agreement or applicable laws.
  
- 3     **Evidence.com Data Security.**
  - 3.1.     **Generally.** TASER will implement commercially reasonable and appropriate measures designed to secure Customer Content against accidental or unlawful loss, access or disclosure. TASER will maintain a comprehensive Information Security Program (**ISP**) that includes logical and physical access management, vulnerability management, configuration management, incident monitoring and response, encryption of digital evidence uploaded, security education, risk management, and data protection. The Customer is responsible for maintaining the security of end user names and passwords and taking steps to maintain appropriate security and access by end users to Customer Content. Log-in credentials are for Customer internal use only and Customer may not sell, transfer, or sublicense them to any other entity or person. The Customer agrees to be responsible for all activities undertaken by the Customer, Customer employees, Customer contractors or agents, and Customer end users which result in unauthorized access to the Customer account or Customer Content. Audit log tracking for the video data is an automatic feature of the Services which provides details as to who accesses the video data and may be downloaded by the Customer at any time. The Customer shall contact TASER immediately if an unauthorized third party may be using the Customer account or Customer Content or if account information is lost or stolen.
  
  - 3.2.     **FBI CJIS Security Addendum.** For customers based in the United States, TASER agrees to the terms and requirements set forth in the Federal Bureau of Investigation (**FBI**) Criminal Justice Information Services (**CJIS**) Security Addendum for the Term of this Agreement.

- 4     **Our Support.** TASER will make available updates as released by TASER to the Evidence.com Services. Updates may be provided electronically via the Internet. TASER will use reasonable efforts to continue supporting the previous version of any API or software for 6 months after the change (except if doing so (a) would pose a security or intellectual property issue, (b) is economically or technically burdensome, or (c) is needed to comply with the law or requests of governmental entities. The Customer is responsible for maintaining the computer equipment and Internet connections necessary for use of the Evidence.com Services.
- 5     **Data Privacy.** TASER will not disclose Customer Content or any information about the Customer except as compelled by a court or administrative body or required by any law or regulation. TASER will give notice if any disclosure request is received for Customer Content so the Customer may file an objection with the court or administrative body. The Customer agrees to allow TASER access to certain information from the Customer in order to: (a) perform troubleshooting services for the account upon request or as part of our regular diagnostic screenings; (b) enforce this agreement or policies governing use of Evidence.com Services; or (c) perform analytic and diagnostic evaluations of the systems.
- 6     **Data Storage.** TASER will determine the locations of the data centers in which Customer Content will be stored and accessible by Customer end users. For United States customers, TASER will ensure that all Customer Content stored in the Evidence.com Services remains within the United States including any backup data, replication sites, and disaster recovery sites. TASER may transfer Customer Content to third parties for the purpose of storage of Customer Content. Third party subcontractors responsible for storage of Customer Content are contracted by TASER for data storage services. Ownership of Customer Content remains with the Customer. For use of an Unlimited Evidence.com License unlimited data may be stored in the Customer's Evidence.com account if the data originates from a TASER device. For use of Totally Unlimited Evidence.com Licenses TASER reserves the right to limit the types of content the Customer can store and share using the Services.
- 7     **Fees and Payment.** Additional end users may be added during the Term at the pricing provided for in Appendix C, Pricing Index of DIR Contract No. DIR-TSO-3561 for purchase of additional end users, prorated for the duration of the Term. Additional end user accounts will terminate on the same date as the pre-existing subscriptions. TASER reserves the right to charge additional fees for exceeding purchased storage amounts or for TASER's assistance in the downloading or exporting of Customer Content.
- 8     **Suspension of Evidence.com Services.** TASER may suspend Customer access or any end user's right to access or use any portion or all of the Evidence.com Services immediately upon notice in accordance with the following:
- 8.1.     The Termination provisions of Appendix A, Section 11B of DIR Contract No. DIR-TSO-3561 apply;
  - 8.2.     The Customer or an end user's use of or registration for the Evidence.com Services (i) poses a security risk to the Evidence.com Services or any third party, (ii) may adversely impact the Evidence.com Services or the systems or content of any other customer, (iii) may subject TASER, TASER's affiliates, or any third party to liability, or (iv) may be fraudulent;

- 8.3.** If TASER suspends the right to access or use any portion or all of the Evidence.com Services, the Customer remains responsible for all fees and charges incurred through the date of suspension without any credits for any period of suspension. TASER will not delete any of Customer Content on Evidence.com as a result of a suspension, except as specified elsewhere in this Agreement.
- 9** **Software Services Warranty.** TASER warrants that the Evidence.com Services will not infringe or misappropriate any patent, copyright, trademark, or trade secret rights of any third party. TASER disclaims any warranties or responsibility for data corruption or errors before the data is uploaded to the Evidence.com Services.
- 10** **License Restrictions.** Neither the Customer nor any Customer end users may, or attempt to: (a) permit any third party to access the Evidence.com Services except as permitted in this Agreement; (b) modify, alter, tamper with, repair, or otherwise create derivative works of any of the Evidence.com Services; (c) reverse engineer, disassemble, or decompile the Evidence.com Services or apply any other process or procedure to derive the source code of any software included in the Evidence.com Services, or allow any others to do the same; (d) access or use the Evidence.com Services in a way intended to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas; (e) copy the Evidence.com Services in whole or part, except as expressly permitted in this Agreement; (f) use trade secret information contained in the Evidence.com Services, except as expressly permitted in this Agreement; (g) resell, rent, loan, or sublicense the Evidence.com Services; (h) access the Evidence.com Services in order to build a competitive product or service or copy any features, functions, or graphics of the Evidence.com Services; (i) remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of ours or our licensors on or within the Evidence.com Services or any copies of the Evidence.com Services; or (j) use the Evidence.com Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, to store or transmit material in violation of third party privacy rights, or to store or transmit malicious code. All licenses granted in this Agreement are conditional on continued compliance DIR Contract No. DIR-TSO-3561 and this Agreement, and will immediately and automatically terminate if the Customer does not comply with any term or condition of this Agreement. The Customer may only use our trademarks in accordance with the TASER Trademark Use Guidelines (located at [www.TASER.com](http://www.TASER.com)).

## Appendix D of DIR-TSO-3561

### Technical Services

### Exhibit B

1 **Scope of Services.** The project scope will consist of the Services identified on the Quote.

1.1. The Package for the Axon and Evidence.com related Services are detailed below:

<p><b>System set up and configuration</b></p> <p>Setup Axon® Mobile on smart phones (if applicable).</p> <p>Configure categories &amp; custom roles based on Customer need.</p> <p>Troubleshoot IT issues with Evidence.com and Evidence.com Dock (Dock) access.</p> <p>Work with IT to install EVIDENCE Sync software on locked-down computers (if applicable).</p> <p>For the Full Service Package: One on-site session Included</p> <p>For the Starter Package: Virtual Assistance Included</p>
<p><b>Dock installation</b></p> <p>Work with Customer to decide ideal location of Dock setup and set configurations on Dock if necessary.</p> <p>Authenticate Dock with Evidence.com using “admin” credentials from Customer.</p> <p>Work with Customer’s IT to configure its network to allow for maximum bandwidth and proper operation within Customer’s network environment.</p> <p>For Full Service: On site Assistance Included</p> <p>For the Starter Package: Virtual Assistance Included</p>
<p><b>Dedicated Project Manager</b></p> <p>Assignment of a specific TASER representative for all aspects of planning the Product rollout (Project Manager). Ideally, the Project Manager will be assigned to the Customer 4–6 weeks prior to rollout.</p>
<p><b>Weekly project planning meetings</b></p> <p>Project Manager will develop a Microsoft Project plan for the rollout of Axon camera units, Docks and Evidence.com account training based on size, timing of rollout and Customer’s desired level of training. Up to 4 weekly meetings leading up to the Evidence.com Dock installation of not more than 30 minutes in length.</p>
<p><b>Best practice implementation planning session—1 on-site session to: (only included in Full Service Package)</b></p> <p>Provide considerations for establishment of video policy and system operations best practices based on TASER’s observations with other agencies.</p> <p>Discuss importance of entering metadata in the field for organization purposes and other best practice for digital data management.</p> <p>Provide referrals of other agencies using the Axon camera products and Evidence.com services</p> <p>Create project plan for larger deployments.</p> <p>Recommend rollout plan based on review of shift schedules.</p>
<p><b>System Admin and troubleshooting training sessions (only included in Full Service Package)</b></p> <p>2 on-site sessions—each providing a step-by-step explanation and assistance for Customer’s configuration of security, roles &amp; permissions, categories &amp; retention, and other specific settings for Evidence.com.</p>
<p><b>Axon instructor training</b></p> <p>Prior to general user training on Axon camera systems and Evidence.com services, TASER’s on-site professional services team will provide training for instructors who can support the Customer’s subsequent Axon camera and Evidence.com training needs.</p>
<p><b>End user go live training and support sessions</b></p> <p>Provide individual device set up and configuration assistance; pairing with viewers when applicable; and training on device use, Evidence.com and EVIDENCE Sync.</p>



**Implementation document packet**

Evidence.com administrator guides, camera implementation guides, network setup guide, sample policies, and categories & roles guide

**Post go live review session**

1.2. The Package for the CEW-related Services are detailed below:

**System set up and configuration**

Configure Evidence.com categories & custom roles based on Customer need.

Troubleshoot IT issues with Evidence.com.

Work with IT to install EVIDENCE Sync software on locked-down computers (if applicable).

Register users and assign roles in Evidence.com.

For the Full Service Package: On-site Assistance Included

For the Starter Package: Virtual Assistance Included

**Dedicated Project Manager**

Assignment of a specific TASER representative for all aspects of planning the Product rollout (Project Manager). Ideally, the Project Manager will be assigned to the Customer 4–6 weeks prior to rollout.

**Best practice implementation planning session to:**

Provide considerations for establishment of CEW policy and system operations best practices based on TASER's observations with other agencies.

Discuss importance of entering metadata for organization purposes and other best practice for digital data management.

Provide referrals to other agencies using the TASER CEW products and Evidence.com services.

For the Full Service Package: On-site Assistance Included

For the Starter Package: Virtual Assistance Included

**System Admin and troubleshooting training sessions**

On-site sessions—each providing a step-by-step explanation and assistance for Customer's configuration of security, roles & permissions, categories & retention, and other specific settings for Evidence.com.

**Evidence.com Instructor training**

TASER's on-site professional services team will provide training on the Evidence.com system with the goal of educating instructors who can support the Customer's subsequent Evidence.com training needs.

For the Full Service Package: Training for up to 3 Individuals at the Customer

For the Starter Package: Training for up to 1 Individual at the Customer

**TASER CEW inspection and device assignment**

TASER's on-site professional services team will perform functions check on all new TASER CEW Smart weapons and assign them to a user on Evidence.com.

**Two-day product specific instructor course with recertification (only included in Full Service Package)**

A certified TASER Master Instructor will conduct a two-day single weapon platform Instructor Course and a one-time recertification course 2 years after completion of the initial Instructor Course

**TASER CEW inspection and firmware update (only included in Full Service Package)**

TASER's on-site professional services team will perform a one-time TASER CEW inspection to ensure good working condition and perform any necessary firmware updates 3 years after the date of the purchase of the Professional Service.

**Post go live review session**

For the Full Service Package: On-site Assistance Included

For the Starter Package: Virtual Assistance Included

1.3. Additional training days may be added on to any service package for additional fees set forth in the Quote.

- 2     **Out of Scope Services.** TASER is responsible to perform only the Services described on the Quote. Any additional services discussed or implied that are not defined explicitly by the Quote will be considered out of the scope.
  
- 3     **Delivery of Services.**
  - 3.1.   **Hours and Travel.** TASER personnel will work within normal business hours, Monday through Friday, 8:30 a.m. to 5:30 p.m., except holidays unless otherwise agreed in advance. All tasks on-site will be performed over a consecutive timeframe unless otherwise agreed to by the Parties in advance. Travel time by TASER personnel to Customer premises will not be charged as work hours performed.
  
  - 3.2.   **Changes to Services.** Changes to the scope of Services must be documented and agreed upon by the Parties in a change order. Changes may require an equitable adjustment in the charges or schedule.
  
- 4     **Authorization to Access Computer Systems to Perform Services.** The Customer authorizes TASER to access relevant Customer computers and network systems solely for the purpose of performing the Services. TASER will work diligently to identify as soon as reasonably practicable the resources and information TASER expects to use, and will provide an initial itemized list to the Customer. The Customer is responsible for, and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by the Customer.
  
- 5     **Site Preparation and Installation.** Prior to delivering any Services, TASER will provide 1 copy of the then-current user documentation for the Services and related Products in paper or electronic form (**Product User Documentation**). The Product User Documentation will include all environmental specifications that must be met in order for the Services and related Products to operate in accordance with the Product User Documentation. Prior to the installation of Product (whether performed by the Customer or TASER), the Customer must prepare the Installation Site in accordance with the environmental specifications set forth in the Product User Documentation. Following the installation of the Products, the Customer must maintain the Installation Site where the Products have been installed in accordance with the environmental specifications set forth in the Product User Documentation. In the event that there are any updates or modifications to the Product User Documentation for any Products provided by TASER under this Agreement, including the environmental specifications for the Products, TASER will provide the updates or modifications to Customer when they are generally released by TASER to TASER customers.
  
- 6     **Acceptance Checklist.** TASER will present an Acceptance Checklist (**Checklist**) upon completion of the Services that will exactly mirror the description of services within this Section. The Customer will sign the Checklist acknowledging completion of the Services once the on-site service session has been completed. If the Customer reasonably believes that TASER did not complete the Services in substantial conformance with this Agreement, the Customer must notify TASER in writing of the specific reasons for rejection of the Services

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within 7 calendar days from delivery of the Checklist. TASER will address the issues and then will re-present the

Checklist for approval and signature. If TASER does not receive the signed Checklist or a written notification of the reasons for the rejection of the performance of the Services within 7 calendar days of delivery of the Checklist, the absence of the Customer response will constitute affirmative acceptance of the Services, and a waiver of any right of rejection.

- 7**     **Liability for Loss or Corruption of Data.** The Customer is responsible for: (i) instituting proper and timely backup procedures for Customer software and data; (ii) creating timely backup copies of Customer software or data that may be damaged, lost, or corrupted due to our provision of Services; and (iii) using backup copies to restore any Customer software or data in the event of any loss of, damage to, or corruption of the operational version of Customer software or data, even if such damage, loss, or corruption is due to TASER negligence. However, regardless of any assistance provided by TASER: (i) TASER will in no way be liable for the accuracy, completeness, success, or results of efforts to restore Customer software or data; (ii) any assistance provided by TASER under this Section is without warranty, express or implied; and (iii) in no event will TASER be liable for loss of, damage to, or corruption of Customer data from any cause.

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**Appendix D of DIR-TSO-3561**  
**TASER Assurance Plan**  
**Exhibit C**

The TASER Assurance Plan or “TAP” has been purchased as part of the Quote attached to this Agreement. TAP provides hardware extended warranty coverage, Spare Products, and Upgrade Models at the end of the TAP Term. TAP only applies to the TASER Product listed in the Quote with the exception of any initial hardware or any software services offered for, by, or through the Evidence.com website. The Customer may not buy more than one TAP for any one covered Product.

- 1 **TAP Warranty Coverage.** TAP includes the extended warranty coverage described in the current hardware warranty. TAP warranty coverage starts at the beginning of the TAP Term and continues as long as the Customer continues to pay the required annual fees for TAP. The Customer may not have both an optional extended warranty and TAP on the Axon camera/Dock product. TAP for the Axon camera products also includes free replacement of the Axon flex controller battery and Axon body battery during the TAP Term for any failure that is not specifically excluded from the Hardware Warranty.
- 2 **TAP Term.** TAP Term start date is based upon the shipment date of the hardware covered under TAP. If the shipment of the hardware occurred in the first half of the month, then the Term starts on the 1st of the following month. If the shipment of the hardware occurred in the second half of the month, then the Term starts on the 15th of the following month.
- 3 **SPARE Product.** TASER will provide a predetermined number of spare Products for those hardware items and accessories listed in the Quote (collectively the “Spare Products”) to keep at the Customer location to replace broken or non-functioning units in order to improve the availability of the units to officers in the field. The Customer must return to TASER, through TASER’s RMA process, any broken or non-functioning units for which a Spare Product is utilized, and TASER will repair or replace the non-functioning unit with a replacement product. TASER warrants it will repair or replace the unit which fails to function for any reason not excluded by the TAP warranty coverage, during the TAP Term with the same product or a like product, at TASER’s sole option. The Customer may not buy a new TAP for the replacement product or the Spare Product.
  - 3.1. Within 30 days of the end of the TAP Term the Customer must return to TASER all Spare Products. The Customer will be invoiced for and are obligated to pay to TASER the MSRP then in effect for all Spare Products not returned to TASER. If all the Spare Products are returned to TASER, then TASER will refresh the allotted number of Spare Products with Upgrade Models if the Customer purchases a new TAP for the Upgrade Models.
  - 3.2. In the event TAP is terminated, the Customer will be invoiced for and are obligated to pay to TASER the price set forth in Appendix C, Pricing Index of DIR Contract No. DIR-TSO-3561 then in effect for all Spare Products provided under TAP. If the Spare Products are returned within 30 days of the Spare Product invoice date, credit will be issued and applied against the Spare Product invoice.

- 4 **TAP Officer Safety Plan (OSP).** The Officer Safety Plan includes the benefits of the Evidence.com Unlimited License (which includes unlimited data storage for Axon camera and Axon Capture generated data in the Evidence.com Services and TAP for the Axon Camera), TAP for Evidence.com Dock, one TASER brand CEW with a 4-year Warranty, one CEW battery, and one CEW holster. At any time during the OSP term the Customer may choose to receive the CEW, battery and holster by providing a \$0 purchase order. At the time elected to receive the CEW, the Customer may choose from any current CEW model offered. The OSP plan must be purchased for a period of 5 years. If the OSP is terminated before the end of the term and the Customer did not receive a CEW, battery or holster, then we will have no obligation to reimburse for those items not received. If OSP is terminated before the end of the term and the Customer received a CEW, battery and/or holster then (a) the Customer will be invoiced for the remainder of the MSRP for the Products received and not already paid as part of the OSP before the termination date; or (b) only in the case of termination for non-appropriations, return the CEW, battery and holster to TASER within 30 days of the date of termination.

- 5 **TAP Upgrade Models.** Upgrade Models are to be provided as follows during and/or after the TAP Term: (i) an upgrade will provided in year 3 if the Customer purchased 3 years of Evidence.com services with Ultimate Licenses or Unlimited Licenses and all TAP payments are made; or (ii) 2.5 years after the Effective Date and once again 5 years after the Effective Date if the Customer purchased 5 years of Evidence.com services with an Ultimate License or Unlimited Licenses or OSP and made all TAP payments. If an undisputed invoice for TAP is more than 30 days past due or Customer defaults for the Evidence.com services, then TASER has no obligation to provide the free Upgrade Models.

If the Customer received Axon Products free of charge and TAP is terminated before the end of the term then (a) the Agency will be invoiced for the remainder of the price set forth in Appendix C, Pricing Index of DIR Contract No. DIR-TSO-3561 for the Products received and not already paid as part of the TAP before the termination date; or (b) only in the case of termination for non-appropriations, return the Products to TASER within 30 days of the date of termination.

Any products replaced within the six months prior to the scheduled upgrade will be deemed the Upgrade Model. Thirty days after the Upgrade Models are received, the Customer must return the products to TASER or TASER will deactivate the serial numbers for the products received unless the Customer purchases additional Evidence.com licenses for the Axon camera products the Customer is keeping. The Customer may buy a new TAP for any Upgraded Model.

#### **5.1. TAP Axon Camera Upgrade Models.**

- 5.1.1. If the Customer purchased TAP for Axon Cameras as a stand-alone service, then TASER will upgrade the Axon camera (and controller if applicable), free of charge, with a new on-officer video camera that is the same product or a like product, at TASER's sole option. TASER makes no guarantee that the Upgrade Model will utilize the same accessories or Dock. If the Customer would like to change product models for the Upgrade Model, then the Customer must pay the price difference in effect at the time of the upgrade between the

MSRP for the offered Upgrade Model and the MSRP for the model that will be acquired. No refund will be provided if the MSRP of the new model is less than the MSRP of the offered Upgrade Model.

**5.1.2.** If the Customer purchased Unlimited License or OSP, then TASER will upgrade the Axon camera (and controller if applicable), free of charge, with a new on- officer video camera of the Customer's choice.

**5.2. TAP Dock Upgrade Models.** TASER will upgrade the Dock free of charge, with a new Dock with the same number of bays that is the same product or a like product, at TASER's sole option. If the Customer would like to change product models for the Upgrade Model or add additional bays, then the Customer must pay the price difference in effect at the time of the upgrade between the MSRP for the offered Upgrade Model and the MSRP for the model desired. No refund will be provided if the MSRP of the new model is less than the MSRP of the offered Upgrade Model.

**6** **Termination.** In the event TASER terminates for material breach in accordance with Appendix A, Section 11.B of DIR Contract No. DIR-TSO-3561, TAP coverage will terminate as of the date of termination and no refunds will be given.

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**Appendix D of DIR-TSO-3561**  
**Axon Commander™ Software**  
**Exhibit D**

Use of the Axon Commander Software (Software) indicates agreement to the terms of DIR Contract No. DIR-TSO-3561 and those below.

The Software, all executable instructions, images, icons, sound, and text incorporated in the Software, is owned by TASER and is protected by United States copyright laws and international treaty provisions. Except to the extent expressly licensed in this Agreement, all rights are reserved to TASER.

1. **License Grant.** TASER grants a non-exclusive, royalty-free, worldwide right and license to use the Software, where “use” and “using” in this Agreement mean storing, loading, installing, or executing the Software exclusively for data communication with a TASER product. The Customer may use the Software in a networked environment on computers other than the computer on which the Software is installed provided that each execution of the Software is for data communication with a TASER product. The Customer may make copies and adaptations of the Software for archival purposes only. When copying or adaptation is an essential step in the authorized use of the Software the Customer shall retain all copyright, trademark, and proprietary notices in the original Software on all copies or adaptations.
2. **License Restrictions.** The Customer may not use the Software in any manner or for any purpose other than as expressly permitted by this Agreement. The Customer may not: (a) modify, alter, tamper with, repair, or otherwise create derivative works of the Software; (b) reverse engineer, disassemble, or decompile the Software or apply any other process or procedure to derive the source code of the Software, or allow any others to do the same; (c) access or use the Software in a way intended to avoid incurring fees or exceeding usage limits or quotas; (d) copy the Software in whole or part, except as expressly permitted in this Agreement; (e) use trade secret information contained in the Software, except as expressly permitted in this Agreement; (f) resell, rent, loan or sublicense the Software; (g) access the Software in order to build a competitive product or service or copy any features, functions or graphics of the Software; or (h) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of TASER or TASER’s licensors on or within the Software or any copies of the Software. All licenses granted in this Agreement are conditional on continued compliance with ~~DIR Contract No. DIR-TSO-3561~~ and this Agreement, and will immediately terminate if the Customer does not comply with any term or condition of this Agreement. During the term of use of the Software and after, the Customer will not assert, nor authorize, assist, or encourage any third party to assert, against TASER or any of TASER’s affiliates, customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding the Software.
3. **Support.** TASER may make available updates and error corrections (collectively, “Updates”) to the Software. Updates may be provided electronically via the Internet or via media as determined solely by TASER. It is the Customer’s responsibility to establish and maintain adequate access to the Internet in order to receive the updates. The Customer is



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responsible for maintaining the computer equipment necessary for use of the Software. At its sole discretion, TASER may provide technical support for the current and prior release(s)/version(s) of the Software for a period of six (6) months following the date the subsequent release/version is made generally available.

4. **Termination.** This Agreement will continue for the duration of TASER's copyright in the Software, unless earlier terminated as provided in accordance with Appendix A, Section 11B of DIR Contract No. DIR-TSO-3561 and this Agreement. Obligations to pay accrued charges or fees will survive the termination of this Agreement.

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**Appendix D of DIR-TSO-3561**  
**Axon Integration Services**  
**Exhibit E**

1. **Term.** The term of this SOW commences on the Effective Date. The actual work to be performed by TASER is not authorized to begin until TASER receives the signed Quote or a purchase order for the Integration Services, whichever is first.
2. **Scope of Integration Services.** The project scope will consist of the development of an integration module that allows the [EVIDENCE.com](https://evidence.com) services to interact with the Customer's RMS so that Customer's licensees may use the integration module to automatically tag the AXON® recorded videos with a case ID, category, and location. The integration module will allow the Integration Module License holders to auto populate the AXON video meta-data saved to the [EVIDENCE.com](https://evidence.com) services based on data already maintained in the Customer's RMS. TASER is responsible to perform only the Integration Services described in this SOW and any additional services discussed or implied that are not defined explicitly by this SOW will be considered out of the scope and may result in additional fees.
3. **Pricing.** All Integration Services performed by TASER will be rendered in accordance with the fees set forth in the Quote. Payments will be in accordance with Appendix A, Section 8J of DIR Contract No. DIR-TSO-3561.
4. **Delivery of Integration Services.**
  - 4.1 **Support After Completion of the Integration Services.** After completion of the Integration Services and acceptance by the Customer, TASER will provide up to 5 hours of remote (phone or Web-based) support services at no additional charge to the Customer. TASER will also provide support services that result because of a change or modification in the [EVIDENCE.com](https://evidence.com) services at no additional charge as long as the Customer maintains [EVIDENCE.com](https://evidence.com) subscription licenses and Integration Module Licenses, and as long as the change is not required because the Customer changes its RMS. Thereafter, any additional support services provided to the Customer will be charged at TASER's then current standard technical services rate as indicated in Appendix C of DIR Contract No. DIR-TSO-3561.
  - 4.2 **Changes to Services.** Changes to the scope of the Integration Services must be documented and agreed upon by the Parties in a change order. If the changes cause an increase or decrease in any charges or cause a scheduling change from that originally agreed upon, an equitable adjustment in the charges or schedule will be agreed upon by the Parties and included in the change order, signed by both Parties.
  - 4.3 **Warranty.** TASER warrants that it will perform the Integration Services in a good and workmanlike manner.
5. **Acceptance.** TASER will present Customer with a completed Checklist (**Checklist**) certifying TASER's completion of the Integration Services. If Customer reasonably believes that TASER did not complete the Integration Services in substantial conformance with this SOW, Customer must notify TASER in writing of its specific reasons for rejection within 7 calendar days from delivery of the Checklist to the Customer. TASER will address the Customer's issues and will re-present the Checklist for the Customer's review. If TASER does not receive a written notification of

the reasons for rejection of the Checklist, the absence of a response will constitute Customer's affirmative acceptance of the Integration Services, and a waiver of any right of rejection.

- 6 Customer's Responsibilities.** TASER's successful performance of the Integration Services depends upon the Customer's:
- 6.1** Making available its relevant systems, including its current RMS, for assessment by TASER (including making these systems available to TASER via remote access if possible);
  - 6.2** Making any required modifications, upgrades or alterations to Customer's hardware, facilities, systems and networks related to TASER's performance of the Integration Services;
  - 6.3** Providing access to the building facilities and where TASER is to perform the Integration Services, subject to safety and security restrictions imposed by the Customer (including providing security passes or other necessary documentation to TASER representatives performing the Integration Services permitting them to enter and exit Customer premises with laptop personal computers and any other materials needed to perform the Integration Services);
  - 6.4** Providing all necessary infrastructure and software information (TCP/IP addresses, node names, and network configuration) necessary for TASER to provide the Integration Services;
  - 6.5** Promptly installing and implementing any and all software updates provided by TASER;
  - 6.6** Ensuring that all appropriate data backups are performed;
  - 6.7** Providing to TASER the assistance, participation, review and approvals and participating in testing of the Integration Services as requested by TASER;
  - 6.8** Providing TASER with remote access to the Customer's [Evidence.com](#) account when required for TASER to perform the Integration Services;
  - 6.9** Notifying TASER of any network or machine maintenance that may impact the performance of the integration module at the Customer; and
  - 6.10** Ensuring the reasonable availability by phone or email of knowledgeable staff and personnel, system administrators, and operators to provide timely, accurate, complete, and up-to-date documentation and information to TASER (these contacts are to provide background information and clarification of information required to perform the Integration Services).
- 7 Authorization to Access Computer Systems to Perform Services.** Customer authorizes TASER to access Customer's relevant computers, network systems, and RMS solely for the purpose of performing the Integration Services. TASER will work diligently to identify as soon as reasonably practicable the resources and information TASER expects to use, and will provide an initial itemized list to Customer. Customer is responsible for, and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Customer.
- 8 Definitions.** "Integration Services" means the technical services provided by us pursuant to this SOW.

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**Appendix D of DIR-TSO-3561**  
**AXON Forensic Suite Software**  
**Exhibit F**

Use of any of the Axon Forensic Suite Software including Axon Convert, Axon Five and Axon Detect (Software) indicates agreement to the terms of DIR Contract No. DIR-TSO-3561 and those below. The Software, all executable instructions, images, icons, sound, and text incorporated in the Software, is owned by Amped Software SRL (Amped) and is protected by United States copyright laws and international treaty provisions. Except to the extent expressly licensed in this Agreement, all rights are reserved to Amped.

- 1. License Grant.** TASER grants a non-exclusive, royalty-free, worldwide right and license to use the Software, where “use” and “using” in this Agreement mean storing, loading, installing, or executing the Software exclusively for data communication with an Amped or a TASER product. This Software may be used in a networked environment on computers other than the computer on which the Software is installed provided that each execution of the Software is for data communication with an Amped or a TASER product. Copies and adaptations of the Software may be made for archival purposes and when copying or adaptation is an essential step in the authorized use of the Software provided that the Customer retains all copyright, trademark, and proprietary notices in the original Software on all copies or adaptations. The Customer may copy the written materials accompanying the Software.
- 2. Definitions.** "Amped Software" means the computer software programs available developed by Amped and the name of the applications are Amped Five Professional, Amped Five First Responder, Amped DVRCONV, and AMPED AUTHENTICATE. "Amped Copyrights" means Amped's copyrights in and to Amped Five.
- 3. License Restrictions.** The Customer may not use the Software in any manner or for any purpose other than as expressly permitted by this Agreement. The Customer may not: (a) modify, alter, tamper with, repair, or otherwise create derivative works of the Software; (b) reverse engineer, disassemble, or decompile the Software or apply any other process or procedure to derive the source code of the Software, or allow any others to do the same; (c) access or use the Software in a way intended to avoid incurring fees or exceeding usage limits or quotas; (d) copy the Software in whole or part, except as expressly permitted in this Agreement; (e) use trade secret information contained in the Software, except as expressly permitted in this Agreement; (f) resell, rent, loan or sublicense the Software; (g) access the Software in order to build a competitive product or service or copy any features, functions or graphics of the Software; or (h) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Amped or TASER licensors on or within the Software or any copies of the Software. All licenses granted to the Customer in this Agreement are conditional on continued compliance of DIR Contract No. DIR-TSO-3561 and this Agreement, and will immediately and automatically terminate if the Customer does not comply with any term or condition of this Agreement. During the term of use of the Software and after, the Customer will not assert, nor authorize, assist, or encourage any third party to assert, against TASER or any TASER affiliates, customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding the Software.

- 4. Support.** The Customer acknowledges that TASER offers no guarantee of support or maintenance for Amped FIVE until purchased. Once purchased, TASER will offer support of Amped Five for one year at support@taser.com. On or before the one year anniversary of purchase, the Customer may purchase additional years of support at current pricing. Should no support package be purchased, ongoing support and updates are discontinued by Amped for product, even though the Customer license remains valid for perpetual use.

**Remedies.** THE CUSTOMER'S EXCLUSIVE REMEDY IS, AT TASER'S SOLE OPTION, REPAIR OR REPLACEMENT OF THE SOFTWARE OR REFUND OF PART OR ALL OF THE LICENSE FEE, IF ANY, PAID BY THE CUSTOMER FOR THE SOFTWARE.

- 5. Termination.** This Agreement will continue for the duration of Amped's copyright in the Software, unless earlier terminated in accordance with Appendix A, Section 11B of DIR Contract No. DIR-TSO-3561.
- 6. Export Controls (U.S. and Canada Only).** EXPORT OF THIS SOFTWARE IS PROHIBITED. SOFTWARE MAY NOT BE EXPORTED WITHOUT THE PRIOR EXPRESSED WRITTEN APPROVAL OF TASER. UNAUTHORIZED EXPORT OF SOFTWARE IS PROHIBITED BY TASER AND CONSIDERED A VIOLATION OF LICENSE AGREEMENT.

## GOAL DETERMINATION REQUEST FORM

<b>Buyer Name/Phone</b>	Daniel Dellemonache/x42981	<b>PM Name/Phone</b>	N/A
<b>Sponsor/User Dept.</b>	APD	<b>Sponsor Name/Phone</b>	Juanita Fonseca/x45067
<b>Solicitation No</b>	DIR Contract	<b>Project Name</b>	Axon Body Camera Accessories
<b>Contract Amount</b>	\$1,500,000	<b>Ad Date (if applicable)</b>	N/A
<b>Procurement Type</b>			
<input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – Design Build Op Maint <input type="checkbox"/> IFB – IDIQ <input type="checkbox"/> Nonprofessional Services <input type="checkbox"/> Critical Business Need <input type="checkbox"/> Sole Source*			
<input type="checkbox"/> AD – CM@R <input type="checkbox"/> AD – JOC <input type="checkbox"/> PS – Project Specific <input type="checkbox"/> Commodities/Goods <input type="checkbox"/> Interlocal Agreement			
<input type="checkbox"/> AD – Design Build <input type="checkbox"/> IFB – Construction <input type="checkbox"/> PS – Rotation List <input checked="" type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Ratification			
<b>Provide Project Description**</b>			
APD would like to setup a new 5-year master agreement with Axon for body camera parts and accessories.			
<b>Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.</b>			
NC180000013 was setup for the initial deployment of body cameras. No goals were established.			
<b>List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)</b>			
6552912 - Parts and Accessories, Cameras, Digital - 100%			
Daniel Dellemonache		5/14/2019	
<b>Buyer Confirmation</b>		<b>Date</b>	

\* Sole Source must include Certificate of Exemption

\*\*Project Description not required for Sole Source

<b>FOR SMBR USE ONLY</b>			
<b>Date Received</b>	5/14/2019	<b>Date Assigned to BDC</b>	5/14/2019
<b>In accordance with Chapter2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:</b>			
<input type="checkbox"/> Goals	% MBE	% WBE	
<input type="checkbox"/> Subgoals	% African American	% Hispanic	
	% Asian/Native American	% WBE	
<input type="checkbox"/> Exempt from MBE/WBE Procurement Program		<input checked="" type="checkbox"/> No Goals	

## GOAL DETERMINATION REQUEST FORM

**This determination is based upon the following:**

- |  |   |
|--|---|
| <input type="checkbox"/> Insufficient availability of M/WBEs       | <input checked="" type="checkbox"/> No availability of M/WBEs       |
| <input type="checkbox"/> Insufficient subcontracting opportunities | <input checked="" type="checkbox"/> No subcontracting opportunities |
| <input type="checkbox"/> Sufficient availability of M/WBEs         | <input type="checkbox"/> Sufficient subcontracting opportunities    |
| <input type="checkbox"/> Sole Source                               | <input type="checkbox"/> Other                                      |

*If Other was selected, provide reasoning:*

**MBE/WBE/DBE Availability**

*There are no subcontractors listed on the HSP*

**Subcontracting Opportunities Identified**

*none*

Amy Amaya

**SMBR Staff**

**Signature/ Date**

*5/15/19*

**SMBR Director or Designee**

**Date**

*5-15-19*

**Returned to/ Date:**